University of Alberta

Making Room

Legitimate and Illegitimate Immigration Controls

by

Aaron C. Maltais

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment of the requirements for the degree of Master of Arts

Department of Political Science

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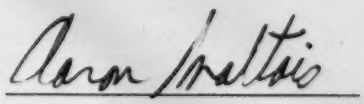

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ABSTRACT

The country we are born into has a significant affect on the wealth, opportunity, and security we experience. As a result, political theorists engage in a debate on the moral legitimacy of our state system where access to the resources of any particular state is a birthright. Most theoretical arguments on this topic suppose that societies either have a right or have no right to control immigration. The argument of this work is that the problem of immigration cannot be dealt with in a rights discourse. Ideal circumstances would be those where immigration controls either became unnecessary or did not affect people's access to wealth, security, and opportunity. However, it is only when global disparity is not significant that one can make such arguments, while it is only within a context of disparity that immigration presents us with difficult theoretical problems. As a result, we must ask when it is legitimate or illegitimate to limit immigration. This thesis shows that states do not have a general right to limit immigration, but must have legitimate reasons for immigration controls. Legitimate immigration limits must be motivated by a desire to defend valuable societal aims while being open enough that the interests of disadvantaged outsiders are incorporated into the state's immigration policies.

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Introduction

In this thesis I will examine moral questions associated with the immigration policies of wealthy states. This work will focus on the legitimacy of limiting immigration in a world where the disparity between rich and poor countries is a central feature of our global circumstances. Where we are born has a profound effect on the wealth, security, and opportunity provided to us in our societies. Consequently, theorists examine the moral legitimacy of our state system where citizenship, and thus access to the resources of any particular state, is a birthright. The immigration debate is dominated by a central moral tension between the interests of people born into poor countries who wish to improve their lives through migration to a wealthy state, and the interests of people born into wealthy states who want to protect the wealth, security, and opportunity that define their society and make it an attractive place to live. Most theorists who examine the immigration problem acknowledge the importance of this tension. However, much of the literature on this topic attempts to establish that a society or state has an inherent right to control immigration, or that there is no such right and individuals ought to have the right to live in any state they choose. These approaches do not address the moral tension between disadvantaged outsiders and advantaged insiders, but attempt to resolve the tension. I argue that both the interests of disadvantaged outsiders and advantaged insiders have significant moral weight in determining the legitimacy of a state's immigration policies. The tension between the interests of outsiders and insiders cannot be resolved by arguing that a society has an inherent right to limit immigration despite circumstances of global disparity, or by arguing that there is no basis on which a society can legitimately exclude outsiders.

Morally legitimate immigration controls must incorporate both the interests of disadvantaged outsiders and advantaged insiders.

In this introductory chapter, I present empirical information that describes the basis for viewing immigration as an important topic for political theory. In particular, I will describe the way wealthy states limit immigration, and the motivations behind these controls.

Currently, a great deal of political and academic attention is focused on refugee, immigration, and border issues. Immigration has received significant attention due to the increasing numbers of migrants. The United Nations report *World Population Monitoring, 1997: International Migration and Development* states, "the number of international migrants in the world rose from 75 million in 1965 to 120 million in 1990, thus growing at an average annual rate of 1.9 percent during the period 1965-1990."[1] As global disparity is the motivation for examining the immigration problem, this work will be concerned with the immigration policies of wealthy states that limit access to outsiders from poor countries. It should be noted, that the majority of migration that occurs in the world today is between less developed countries. The *World Population Report* states,

> the number of international migrants in developing countries has consistently surpassed that in developed countries during 1965-1990, the number of migrants in developing countries as a proportion of the world total of migrant stock declined from 59.6 percent in 1965 to 54.7 percent in 1975 and has remained almost unchanged since then.[2]

Still, migration pressure from poor to rich nations is significant. The relatively closed border policies of wealthy states account to a large degree for the migration patterns noted above. In Europe for example,

> the recognition rate for asylum-seekers stood at 42 per cent in 1984. By 1993, it had dropped to under 10 per cent . . . . In 1993, for example, of the 685,000 asylum applications considered in Western Europe, only 45,000 were granted refugee status; but an additional 178,000 were allowed to stay on humanitarian grounds. Thus while the refugee recognition rate may have been under 10 per cent, more than 30 per cent were acknowledged to have legitimate reasons for remaining in the country where they had sought asylum."[3]

This information shows that there is both significant pressure from outside wealthy states for access, and a strong resistance from within wealthy states to this pressure.

From an empirical standpoint there are good reasons to focus on migration from developing countries to developed countries. This is clear when we compare population growth between these regions. A comparison between more and less developed states shows that net migration moves from less developed regions to more developed regions.

Table 1.

Population size, 1996 and components of growth, 1990-1995, major areas and regions
(Thousands)

Major area and region	Population	Births	Deaths	Natural Increase	Net Migration	Total Growth
		(annual averages)				
World Total	5,767,774	132,091	51,129	80,961	-	80,961
More developed regions[a]	1,175,039	14,341	11,760	2,580	2,703	4,653
Less developed regions[b]	4,592,735	117,750	39,369	78,381	-2,703	76,309

Source: *World Population Prospects: The 1996 Revision* (United Nations publication)
[a]More developed regions, comprising all regions of Europe, North America, Japan and Australia/New Zealand.
[b]Less developed regions, comprising all regions of Africa, Asia (excluding Japan) and Latin America and the Caribbean, and regions of Melanesia, Micronesia and Polynesia.

As well, the overall population growth in less developed regions is staggeringly higher than in developed regions. This suggests that migration pressure from less developed to more developed countries will increasingly be a problem. There are also good theoretical reasons for examining the immigration policies of wealthy states.

Moral philosophers often investigate the obligations we have to each other as human beings. The immigration debate is important for moral philosophers because it addresses issues of equality of moral worth and equality of opportunity. For individuals, borders represent a central factor in their life chances. The disparity in wealth, security, and opportunity that is created and perpetuated by borders forces us to ask how committed we really are to the moral equality of all people, and to the notion that everybody should have an equal opportunity to a good life. The immigration debate presses issues of priority. On what basis can those born into wealthy states lay claim to the advantages associated with their birth to the exclusion of disadvantaged outsiders? When will the interests of others in need force us to abandon our own interests, and when can we legitimately view our own interests as prior? We can see the specific kinds of immigration policies that provoke these sorts of moral issues by looking at Canadian immigration controls.

The Canadian example is helpful because Canada is a wealthy nation that allows extensive immigration. Further, Canada has a strong professed international commitment to human rights. Canada has abandoned overtly racist immigration policies, and has distinctly envisioned a multicultural society. If in Canada there are

concerns with the legitimacy of its immigration policies, these concerns certainly hold true for many other developed countries where immigration is not as extensive.

The effects of immigration in Canada are for the most part positive, and immigration is necessary for Canada to maintain an economically healthy population. Michael J. Trebilcock in his essay "The case for a liberal immigration policy," summarizes the finding of three works by George J. Borjas, Julian L. Simon, and the Economic Council of Canada on the empirical effects of immigration in Canada and the United States. Speaking to Canada's experience with its patterns of immigration Trebilcock says,

> recent evidence now appears to establish that immigrants as a whole raise the average income of natives, principally in two ways: by a scale effect and by a dependency effect. The scale effect simply means that countries with a larger and more rapidly growing population will be able to sustain some industries and some social infrastructure activities that would not be economically viable at smaller population sizes.[4]

The Economic Council of Canada estimates that,

> for every additional 1 million persons. . . GDP per capita would be increased by somewhere between 0.1 and 0.3 percent (about $71 per present resident). The council estimates that . . .a population of approximately 100 million people in Canada (compared with the present 26 million) would maximize income per person measured by GDP per capita.[5]

The dependency effect refers to immigration patterns that involve people largely in the wage-earning age group, "the dependency ratio for immigrants will typically be lower than that for natives."[6] The Economic Council of Canada found that a doubling of immigration levels from 0.4 percent of the population to 0.8 would result in a GDP

increase of $78 per capita.[7] In general, Trebilcock found that the studies on the effects of immigration showed that,

> First, taking immigrants as a group, including refugees, labor force participation rates, unemployment rates and participation in welfare assistance programs, both in the United States and in Canada, seem comparable, and in some cases superior, to the performance of the native population. . .Second the bulk of the evidence, both for the United States and internationally, suggests that while immigrants, following entry, start off earning less on average than their native counterparts, this gap closes in 10 to 15 years. . .Third the evidence suggests that immigrants exert no or minimal job displacement effects on natives' jobs. . .Fifth, resident's discriminatory attitudes toward immigrants of different racial, ethnic or cultural backgrounds seem to decline markedly with increased contact.

For Canada immigration is both necessary in maintaining an economically viable population and desirable in pursuing economic growth. From the perspective of this work, it is most important to note that despite high levels of immigration, Canada does not incur significant costs to its economy or social welfare from immigration. This is largely due to the makeup of the immigrant population in Canada, as a direct result of our immigration goals. Table 2 shows the various classes of immigrants and the amounts each group account for in the total immigrant population.

Table 2.

The 1991-1995 Immigration Plan

Component	Planned 1991	Actual 1991	Planned			
			1992	1993	1994	1995
Family Class	80,000	84, 123	100,000	95,000	85,000	85,000
Refugees						
Government-assisted and members of designated classes	13,000	7,666	13,000	13,000	13,000	13,000
Privately sponsored refugees and members of designated classes	23,500	17,335	20,000	20,000	15,000	15,000
Refugees landed in Canada (after Jan. 1, 1989)	10,000	10,354	25,000	25,000	25,000	25,000
Independent Immigrants						
Principal applicants	20,000	24,283	21,500	22,500	29,000	29,000
Spouses and other accompanying dependents	21,000	18,872	20,000	25,000	33,000	33,000
Assisted Relatives						
Principal applicants	7,000	7,896	7,000	8,500	11,500	11,500
Spouses and other accompanying dependents	12,500	13,961	12,500	15,000	19,000	19,000
Business Immigrants						
Principal applicants	7,000	4,293	7,000	6,500	5,000	5,000
Spouses and other accompanying dependents	21,000	12,707	21,000	19,500	14,500	14,500
Retirees	5,000	4,204	3,000	0	0	0
TOTAL	220,000	205,694	250,000	250,000	250,000	250,000

Source: Garcia y Griego, Manuel "Canada: Flexibility and Control in Immigration and Refugee Policy" in *Controlling Immigration: A Global Perspective* Wayne A. Cornelius, Philip L. Martin and James F. Hollifield (eds.) Stanford University Press: Stanford, 1994. p. 130

Out of the 205,694 migrants who arrived in Canada in 1991, only 7,666 (Government assisted refugees) entered under an immigration policy that aimed at accepting those outsiders in the worst of positions. This is only 3.7% of the total for 1991. The rest were either privately sponsored, admitted for their ability to contribute to the economy through their personal wealth or marketable skills, or by way of direct family ties. All of these immigrants have a much higher likelihood of being able to contribute rather than depend on the social services provided in Canada. It is for this reason that Canada gains at least modestly from its current immigration policies.

In the context of a moral assessment of Canada's immigration policies, the fact that it admits significant numbers of outsiders to their and our benefit is certainly a positive reality. However, I will present an argument that requires that Canada incorporate immigration policies open enough that Canada actually incurs costs from immigration. I will argue that Canada, like other wealthy states, must move towards accepting more immigrants, and diversifying the aims of immigration from predominately economic aims to include policies that address the interests of disadvantaged outsiders. Maintaining the current levels of economic immigration seems highly desirable economically and politically, as it has helped in fostering a culture of immigration in Canada. Continued economic immigration increases also seem desirable given the evidence presented. However, a significant increase in immigration, in particular for those outsiders most in need, is required on moral grounds.

Those nations that benefit from high levels of wealth, security, and opportunity must share the responsibility for dealing with refugee and immigrant pressures. In this thesis I will attempt to establish a theoretical basis on which countries like Britain, which have increasingly tried to establish a zero immigration policy, must be viewed as failing to meet their moral obligations to incur costs associated with immigration. In her book *Fences and Neighbors,* Jeannette Money describes how the Britain's immigration controls have become significantly stricter since World War II.

Table 3.

British immigration control legislation, 1948-1992

Legislation	Year	Provisions
British Nationality Act	1948	Distinguishes between citizens of U.K and colonies (CUKCs) and Commonwealth citizens; both categories have unrestricted rights of entry and residence in the U.K.
Commonwealth Immigrants Act	1962	Subordinates entry of all Commonwealth citizens and CUKCs whose passports were issued outside U.K. to immigration controls and labour market controls; defines conditions for deportation of immigrants in this category
Commonwealth Immigrants Act	1968	Defines within classification of CUKCs the category or patrial, consisting of individuals connected to U.K. by parentage or 5 years of settlement, who are exempt from immigration controls; others are now subject to such controls, with an initial quota set at 1,500 heads of household
Immigration Appeals Act	1969	Sets up appeals process for immigration control and deportation decisions
Immigration Act	1971	Consolidates Commonwealth immigration control into the more restrictive alien immigration control
Treaty of Accession to European Communities	1972	Permits freedom of movement of labor market participants from EC member states
British Nationality Act	1981	Defines patrials as U.K. citizens, distinct from British dependent territory citizens (BDTCs) and British overseas citizens (BOCs), who are subject to immigration controls; restricts jus soli designation of citizenship to children of British parentage and those of settled immigrants
Immigration (Carriers) Act	1987	Penalizes carriers for transport of aliens who lack proper papers
Immigration Act	1988	Dismantles rights of family reunification
British Nationality (Hong Kong) Act	1991	Grants 50,000 Hong Kong residents and their families access to British citizenship
Asylum and Immigration Appeals Act	1992	Speeds asylum determination process; introduces measures to reduce asylum fraud; removes certain rights of appeal

Source: Money, Jeannette *Fences and Neighbors: The Political Geography of Immigration Control.* Cornell University Press: New York, 1999. p.72.

Britain in 1996 admitted in total 61,730 immigrants, including refugees, while Canada accepted 224,050. Canada certainly has a significantly greater capacity to receive immigrants, and this ought to be reflected in an equitable distribution of immigration costs. Britain in its legislation has been sending a clear message that it wants to significantly reduce immigration. This desire to limit immigration also legitimately accounts for a difference in immigration levels between Canada and Britain. However, how much immigration is desirable from the perspective on a wealthy state is not the only issue in developing legitimate immigration policies.

Britain, like other wealthy states, has an obligation to engage in immigration policies designed to give poor outsiders access to the wealth, security, and opportunity enjoyed by British citizens. The lack of motivation to incur costs from immigration is evident in Britain's recent challenges to the 1951 U.N Convention on Refugees, to which it is a signatory. In June of 2000 Jack Straw, Britain's Home Secretary, addressed the European Conference on Asylum in Lisbon and argued for changes to the UN Convention on Refugees. Straw argued that the UN convention is no longer applicable and said, "the world has changed unrecognizably. There was no expectation in 1951 of intercontinental migratory movement. The assumption was that most refugees would be protected in neighbouring countries in the same region."[8] Britain's proposals would see the establishing of categories of risk for each country, rules enabling rapid refusal of refugee claims, and a system that would require asylum seekers to apply for refugee status from inside the country applicants wish to leave.[9] Britain's aim is to eliminate the impact of immigration, and the costs of dealing directly with refugee claimants.

Straw argues that, "It is unacceptable to expect taxpayers to bear for a prolonged period the cost of supporting asylum applicants who do no qualify for refugee status."[10] As was noted in the UNHCR publication *refugees Daily* on June 16, 2000, "The west takes only a fraction of the world's refugees, with the majority staying in their own region."[11] The UNHCR's statistical findings in Table 4 confirm this statement.

Table 4.

Number of Refugees Distributed by Region of Asylum, 1981-1996

(Percentage)

Region of Asylum	Early 1981	Early 1985	Early 1990	Early 1995	Early 1996
Africa……..	44.6	28.0	30.9	46.6	43.0
Asia……..	27.7	47.7	45.6	34.6	33.8
Europe……..	7.2	6.5	5.4	13.0	15.9
Latin America and the Caribbean….	2.4	3.7	8.1	0.7	1.0
North America…..	14.5	13.1	9.4	4.7	6.0
Oceania……..	3.6	0.9	.7	0.4	0.3
Total (millions)….	8.2	10.5	14.9	14.5	13.2

Sources: United Nations High Commissioner for Refugees, *The State of the World's Refugees: In Search of Solutions* (New York, Oxford University Press, 1995); "Population of concern to UNHCR: a statistical overview", 31 December 1995, mimeograph (Geneva, 1996).

Britain insultingly argues that the UN Convention on Refugees should now become a tool for closing borders to refugees, particularly for those who have only "unfounded" claims to asylum based on economic circumstances. Britain wants to turn what is an expression of moral reasons for incurring the costs associated with accepting refugees into an instrument for avoiding these same costs! Britain's direction in immigration controls is difficult to defend on moral grounds.

As we have seen, Canada's immigration controls are defined by a system of targeted numbers for specific kinds of immigration. For those who do not have some form of establish support from within Canada, access is based on a points system. Independent migrants must apply for entry based on their score in the point scale outlined in Table 5.

Table 5.

The Points System for Independent Immigrants

Factor	Units of Assessment	Notes
Education	12 maximum	
Specific vocational preparation	15 maximum	
Experience	8 maximum	0 units is an automatic processing bar unless (1) applicant has arranged employment and (2) employer accepts lack of experience
Occupation	10 maximum	0 units is an automatic processing bar unless applicant has arranged employment
Arranged employment	10	
Age	10 maximum	10 units if aged 21 to 44; 2 units deducted for each year under 21 or over 44
Knowledge of official language(s)	15 maximum	
Personal suitability	10 maximum	
Levels control	10 maximum	
Total	100	
Pass Mark	70	

Source: Garcia y Griego, Manuel "Canada: Flexibility and Control in Immigration and Refugee Policy" in *Controlling Immigration: A Global Perspective* Wayne A. Cornelius, Philip L. Martin and James F. Hollifield (eds.) Stanford University Press: Stanford, 1994. p. 126

It is clear that the aim of this points system is to consider only those immigrants who will contribute to Canada economically. Just the education, vocation, and occupation categories eliminated almost all outsiders in circumstances of need. Our selection of

independent outsiders cannot only be about our own benefit. Canada's points system is designed to be completely self-serving, and it needs to be accompanied by a system of selection that addresses the needs of poor outsiders who wish to migrate to Canada. It is true that family reunification results in many disadvantaged outsiders migrating to Canada, but those without family ties should also have the opportunity to become Canadians. There is no concern in Canada's immigration policies for those in the worst off positions economically, and only some concern for those in the worst off positions politically. Peter and Renata Singer effectively describe the general argument against the immigration policies of wealthy states today. In their article "The Ethics of Refugee Policy," they say, "we regard the *status quo* as the outcome of a system of national selfishness and political expediency, not as a result of a considered attempt to work out the moral obligations of developed nations in a world with 10 million refugees."[12]

The first chapter of this work will introduce a basic tension that underlies any theoretical investigation on the legitimacy of immigration controls. This tension is largely defined by two competing views. One view is that borders and origin of birth are both random in terms of morality. The wealth, security, and opportunity we have access to because of the country we are born into, is the product of chance. In a world of great disparity between countries, origin of birth will have dramatic effects on people's life chances. Theorists who view immigration controls as illegitimate argue, that any commitment to humans as deserving equal moral worth will conflict directly with a system of immigration controls that distributes wealth, security, and

opportunity as a birthright. The opposing view is that organizing ourselves into defined political societies is essential to all people's wellbeing. Societal groups provide the opportunity to enjoy the economic, political, social, and cultural benefits of group association. The argument from this perspective is that despite global disparity, all societies must have the ability to control membership in order to protect the existence of worthwhile political associations. An analysis of these competing arguments shows that both perspectives are in the end extreme and deeply problematic. Both perspectives, it will be argued, are one sided. By attempting to show, either an inherent right or lack of a right to limit immigration these theorists fail to address the tension that permeates the immigration debate.

In chapter two, I present theorists who address the tension in the immigration debate more effectively. Examining the work of Joseph Carens and James Woodward we see two competing arguments on the legitimacy of limiting immigration from liberal egalitarian perspectives. Both theorists show how the interests of insiders and outsider are morally significant and warrant serious consideration in any theory on immigration controls. Still, criticisms of these theorists develop from what is viewed to be a general misunderstanding of what kind of a theoretical problem arises when investigating the legitimacy of limiting immigration. Carens attempts to establish a general principle that views immigration controls as illegitimate except for some limited circumstances. Woodward, on the other hand, attempts to establish a general right to limit immigration despite the legitimate claims of disadvantaged outsiders. Both theorists find the costs associated with open and closed border policies to be morally significant

in important ways. It does not seem to follow that a state either has an inherent right to limit immigration, or that there is an absolute prohibition on immigration controls. This problem leads to an investigation of the kind of theoretical challenge the immigration debate represents.

In chapter three, I attempt to define more precisely the theoretical problem of immigration controls. The immigration problem is not a problem of justice as it is normally understood. Extreme disparity in wealth, security, and opportunity is the justification for both closing and opening borders. Unlike other inherently problematic theoretical debates, the immigration debate is only problematic given circumstances of global disparity. The entire problem comes out of agreement that it is unfair that origin of birth has such significant implications on individuals' life chances. If the tension in the border debate is problematic because of the environment of global disparity and a judgement that this disparity has significant moral implications, then the question of the legitimacy of immigration controls cannot be solved. The disadvantaged born into poverty do not have an inherent claim in justice against those born into wealth. At the same time, those born into wealth do not have an inherent right to this wealth to the exclusion of others. Arguments that either suppose the elimination of global disparity or argue that disparity does not have any implication on a society's right to control membership, do not address the tension that motivates the immigration debate. In addressing the immigration problem, the goal is not to solve the problems of global distributive justice. Instead, I present an argument that attempts to morally assess our

reactions to these problems. This moral assessment has a great deal to do with what are and are not morally legitimate costs to expect from insiders and outsiders.

Chapter four uses the criticisms and arguments presented in the previous three chapters as a basis for developing an argument requiring that wealthy states' immigration controls incorporate both the interests of disadvantaged outsiders and advantaged insiders. I argue that a wealthy state must have immigration policies that result in the society incurring some costs from immigration. Wealthy states can legitimately limit immigration for some but not all societal aims. In circumstances of disparity, societies do not have an inherent right to close borders. If the interests of outsiders are morally significant in important ways, legitimate immigration controls will have to make some room for these interests despite a wealth of good reasons for limiting immigration. I argue that wealthy states cannot lay claim, in the absolute terms of rights discourse, to the advantages of their society. People in disadvantaged positions do not automatically have a claim in justice that wealthy societies provide them with the benefits chance did not. However, if a state prohibits these outsiders from gaining access to societal advantages, outsiders can legitimately ask on what basis they are laying claim to these advantages. Here, disadvantaged outsiders do have a claim in justice that we not exclude them, as we do not have an inherent right to arbitrarily realized advantages. In this chapter, I present principles that both justify immigration limits, yet require immigration policies designed to provide access to outsiders in the worst off positions. This approach speaks directly to the moral tension that permeates the immigration debate.

[1] *World Population Monitoring, 1997: International Migration and Development.* United Nation New York, 1998: United Nations Publication, p. 19
[2] ibid., p. 19
[3] ibid., p.109
[4] Trebilcock, Michael J. "The case for a liberal immigration policy," in *Justice in Immigration.* Warren F. Schwartz (ed.) Cambridge University Press: Cambridge, 1995. p. 233
[5] Trebilcock, p.233
[6] Trebilcock, p. 234
[7] Trebilcock, p. 234
[8] The Daily Telegraph, Issues 1849, Saturday June 17, 2000. "Straw urges law change to block the refugee run." By Philip Johnston, Home Affairs Editor.
[9] Refugees Daily, "Britain wants Convention changed" June 16, 2000 and "Britain proposals criticized" June 19, 2000 , United Nations High Commission on Refugees. www.unhcr.ch/refworld/cgi-bin/newssearch.pl.
[10] Daily Telegraph, June 17, 2000.
[11] Refugees Daily, June 16, 2000
[12] Peter and Renata Singer "The Ethics of Refugee Policy" in *Open Borders Closed Societies.* p, 128

CHAPTER 1

Introducing the Theoretical Tension in the Immigration Debate

There is a basic tension at the heart of the normative debate regarding the legitimacy of limiting immigration. This tension arises first from the fact that people are born into countries with substantially different levels of wealth, security, and opportunity. As a result, where we happen to be born has a significant effect on our life chances.. The circumstances, good or bad, dictated by one's country of birth are a product of chance. There lacks a sense of fairness in the distribution of these benefits. For this reason, many theorists argue that those born into poor countries ought to have the opportunity to access the wealth, security, and opportunity of wealthy states. At the same time, people need to live within a society. Societies facilitate both economic and cultural prosperity. Human association is defined by a need to have a rule of law to facilitate security, to have rules of commerce to facilitate economic organization and prosperity, and to have a common language to facilitate a common culture. The scope of a political association is determined through membership, and societies distinguish between members and non-members. If societies are to be self-directing in any meaningful way they must have the ability to determine and enforce these distinctions.

Societies understood in this way must be able to give priority to their own interests in order to exercise autonomy.

A description of the tension between the interests of disadvantaged outsiders versus the interests of advantaged insiders brings to the fore the fundamental importance of this topic for political and moral theory. Joseph H. Carens in his article "Immigration, welfare, and justice" says,

> to address the topic of immigration we must ultimately reflect upon some of the most fundamental questions of moral and political theory. To what extent and in what way is it morally legitimate for us to pursue our own interests, and to what extent and it what ways ought we to be concerned with the interests of others?[1]

If wealth, security, and opportunity are to a large degree determined by arbitrary circumstances when viewed from a global perspective, can we lay claim in moral terms to these benefits? How and at what level can we defend the priority of our own interests in a world defined by disparity?

I this chapter I survey the work of theorists who see the issue primarily in terms of rights. These theorists argue either for the human right to immigrate, or for the right of societies to limit immigration. This chapter introduces common approaches in the theoretical debate on immigration, and the basic tension that motivates the immigration debate. The two common approaches to the immigration issue presented here are also critiqued. I argue that neither an argument for an absolute right to limit immigration or an argument for no right to control immigration can adequately incorporate the tension between the interests of disadvantaged outsiders and

advantaged insiders. The approaches surveyed in this chapter outline the elements that create a tension in the immigration debate, but they fail to incorporate this tension into their arguments. These arguments are deeply one sided, and for this reason they are deeply problematic.

The moral implications of the chance of birth.

In their article "The Ethics of Refugee Policy," Peter and Renata Singer describe the underlying premise of many wealthy states' immigration policies. They quote the U.S. Coordinator for Refugee Affairs as saying, "the underlying principle is that refugee admissions is an *ex gratia* act provided by the United States in furthering foreign and humanitarian policies."[2] The *ex gratia* argument, as the Singers describe it, is that whenever a refugee is accepted into a state this act is not based on a moral obligation. Instead, permitting immigration should be considered a charitable act that the society wishes, but is not required to do. The claim is that states only have moral obligations in justice to their own society. The Singers ask, " . . .is this distinction in the way in which we treat residents and nonresidents compatible with our professed beliefs in the equality of all human beings?"[3] The Singers argue that if we truly believe in the moral equality of human beings, we must take into consideration the interests of all people, residents and non-residents, when making immigration policies. They say, "Where the interests of different parities conflict, we would attempt to give equal consideration to all interests, which would mean that more pressing or more fundamental interests take precedence over those less pressing or fundamental."[4]

The Singers' argument is strongly utilitarian. Regardless from which perspective one debates immigration policy, utility demands that we take no one person's needs as more morally relevant than another person's. The Singers make the obvious point that the needs of many potential immigrants, the needs to the basic elements of survival, outweigh the needs of current residents in rich countries to maintain their standards of living. They recognize that at some point the utilitarian equation will result in a halt of immigration. They do not reject the legitimacy of protected borders outright, but they do not accept the way wealthy states currently limit immigration. They say,

> There would come a point at which, for instance, the resident community had eliminated all luxuries that imperiled the environment, and yet the basic needs of the expanding population were putting such pressure on fragile ecological systems that a further expansion would do irreparable harm. Or there might come a point at which tolerance in multicultural society was breaking down . . .[to] the point at witch it was a serious danger to the peace and security of all previously accepted refugees and other immigrants from different cultures.[5]

What is clear in the Singers' account is that a truly equal consideration of all people's needs requires virtually open border policies. Only when concerns for the wellbeing of residents actually becomes as acute as the concerns for the wellbeing of outsiders can immigration limits be imposed by a society.

The Singers' argument takes one side of the tension between the needs of potential immigrants and the needs of societies to its extreme. For them, the principle of equality requires that all borders remain open so long as the needs of outsiders outweigh the needs of insiders. Their argument requires a virtually equal and certainly equitable distribution of resources between states and individuals. The Singers find

that a society has no right to consider the interests of its members as more morally significant that than the interests of outsiders. Societies do not have an inherent right to limit immigration as they see fit.

We can examine the theoretical basis of the Singers' position by looking at the work of Samuel Scheffler. In his essay "The conflicts between justice and responsibility," Scheffler develops what he calls the "distributive objection." He argues that,

> special responsibilities confer additional advantages on people who have already benefited from participating in rewarding groups and relationships and that those additional advantages are unjustified whenever they work to the detriment of people who are needier. [6]

Scheffler argues that one cannot defend against claims for global distributive justice by appealing to the responsibilities we have to those within our own group. These "special responsibilities" represent an illegitimate attempt to abandon our "general responsibilities" that are based on recognition of everybody's equal moral worth.[7] Scheffler constructs a thought experiment in which participation in a group not only creates the advantages of group participation, but also creates a situation in which group members give priority to the interests of those in the group to the detriment of outsiders in disadvantaged positions. He says,

> In effect, such responsibilities provide the wealthy with the moral equivalence of a tax shelter. They provide those who are better off with a moral justification for channeling their time, energy, and other resources into rewarding relations and associations and away from people who are needier. For simply by entering into such relations and associations, one acquires special responsibilities to one's associates, and within limits, these responsibilities then take priority over, and thus serve to shield one from, the claims of others for assistance.[8]

For Scheffler, special responsibilities to those within our own political community do nothing to legitimize a lack of distributive justice on a global scale. Given a situation of unequal wealth, just or not, special responsibilities tend to magnify these inequalities. This magnification is unjust because getting benefits from special relationships cannot also justify escaping general responsibilities to outsiders.

Although Scheffler does not deny the moral significance of forming groups outright, he does deny a wealthy group's ability defend itself from claims of distributive global justice by appealing to internal group responsibilities. As long as disadvantaged outsiders are in significantly worse situations, wealthy societies must view the needs of these outsiders as equally important as their own interests. The demands of distributive justice that both Singer and Scheffler places on the world's wealthiest nations are extremely high. These authors recognize that societies will exist, but deny the legitimacy of societies defining their moral obligations by anything other than purely utilitarian equations. Both theorists argue that wealthy societies have no inherent right to the wealth, security, and opportunity that exists within these states to the exclusion of disadvantaged outsiders. For them, the principles of equality of moral worth and equality of opportunity prohibit wealthy states from limiting access to outsiders, as a matter of justice.

The moral significance of societal autonomy.

Michael Walzer, in his book *Spheres of Justice,* argues that a society has a right to control its own resources to pursue its own societal aims. He argues that there is no moral dilemma for a society that wishes to restrict access to its borders, as outsiders do not have a claim to participation in the society. He says,

> if individuals have a right to form distinct and stable communities-then closure must be permitted somewhere. At some level of political organization something like the sovereign state must take shape and claim authority to make its own admissions policy, to control and sometimes to restrain the flow of immigrants.[9]

For Walzer, the value that communities or societies bring to people is of fundamental importance. Membership in a societal or cultural group is deemed essential to virtually all of the potential aims of human existence including the ability to be moral agents.[10] Walzer goes on to say that these political communities are like groups where, "Individuals may be able to give good reasons why they should be selected, but no one on the outside has a right to be inside."[11] Walzer does say that, "citizens often believe themselves morally bound to open the doors of their country - not to anyone who wants to come in, perhaps, but to a particular group of outsiders, recognized as national or ethnic 'relatives'."[12] We are bound by a special extension of the political community beyond the actual physical borders. Outside of this extension, a community is bound by nothing other than its own interest in pursuing mutual-aid towards potential immigrants. Walzer's view is that once we allow that communities are morally defensible and necessary forms of human association, we must also accept

that membership in these communities will be limited. He argues that if we are going to take the importance of societies seriously, then we must accept that societies (i.e. states) have autonomy over membership.[13] Outsiders do not have a right to participation in a society because states do have an inherent right to control the resources within their territories as they see fit.

Walzer's argument is extreme in that it provides no basis on which outsiders can make any claim to participation in communities other than that which they were born into. Walzer completely ignores the lack of fairness in the distribution of goods among countries. Jules L. Coleman and Sarah K. Harding in their essay "Citizenship, justice, and political borders," explain how Walzer's approach does not allow for an investigation of the legitimacy of limiting immigration. In describing a Walzer type argument they say,

> political borders, even arbitrarily or conventionally set, have moral significance because they define the boundaries within which principles of distributive justice are to apply. . . . In this view principles of distributive justice apply to members of a political community. Those outside the borders have no claim in distributive justice to any of the resources of the territory, while those within the territory do.[14]

However, Coleman and Harding go on to say,

> One apparent consequence of the position that principles of distributive justice apply to members of political communities is that it seems unlikely that the principles, so conceived, can provide the standard against which a community's immigration policy is to be assessed. Distributive justice assumes that the boundary question of which individuals fall within the relevant community is already resolved; they cannot provide an answer to that question. All theories of distributive justice of this sort, namely, those that take the domain of distributive justice to be set by membership in a

> political community, will fail to illuminate the way we should think about immigration policy, for they assume the existence of an answer to precisely the question we are asking.[15]

Walzer has removed the possibility of assessing the legitimacy of a state's immigration controls from any perspective other than from within the state itself. Walzer has made a positive argument regarding the right of societies to have control over their territory, but this positive right entails a corresponding right to exclude others from this territory. When Walzer argues that justice requires that a political community, "...must take shape and claim authority to make its own admissions policy," he has eliminated his ability to be critical of any immigration policy regardless of its content in terms of justice. He literally has nothing to say about immigration policy because he has argued that the idea of having a society entails a right to control immigration.

Coleman and Harding do not accept the approach taken by Walzer, yet they aim at defending many of the immigration policies Walzer's argument is used to defend. They argue that,

> the most important fact from a political point of view about individuals as we know them is that they form projects, plans, and goals and act on the basis of them. These goals provide them with reasons for acting (as do their needs). Satisfying these goals contributes to their well-being. Well-being is itself a way of assessing a life taken as a whole. Autonomy is central both to formulating these plans and to acting on the basis of them. The meaningful exercise of autonomy itself depends on the existence of a meaningful set of options and a framework within which those options can be realized. Well-being depends on autonomy; autonomy depends on options and choices.[16]

Coleman and Harding use the work of Will Kymlicka to defend this argument. Kymlicka in *Multicultural Citizenship* says,

> Whether or not a course of action has any significance for us depends on whether, and how, our language renders vivid to us the point of that activity. And the way in which language renders vivid these activities is shaped by our history, our 'traditions and conventions'. Understanding these cultural narratives is a precondition of making intelligent judgements about how to lead our lives. In this sense, our culture not only provides options, it also 'provides the spectacles through which we identify experiences as valuable'.[17]

The implication regarding the legitimacy of limiting immigration, is that the value of culture requires the possibility of closing borders. Speaking about limitations on individual liberty in the tradition of liberal theory Kymlicka says,

> For example, few people favour a system of open borders, where people could freely cross borders and settle, work and vote in whatever community they desired. Such a system would dramatically increase the domain within which people would be treated as free and equal citizens. Yet open borders would also make it more likely that people's own national community would be overrun by settlers from other cultures, and that they would be unable to ensure their survival as a distinct national culture.[18]

Kymlicka argues that a national culture is an essential framework from which we can make significant choices in our lives and assess our lives. For Coleman and Harding, this suggests that the value associated with being a member of a political community is fundamental to autonomy of the individual and their ultimate wellbeing. The argument presented by Coleman and Harding, and Kymlicka is different than Walzer's in that they do not do not argue for an inherent right to limit immigration as entailed in the idea of a society's right to self-determination. Instead, they argue that the right to limit immigration arises from a need to maintain and protect elements of a society that

are crucial to its members' wellbeing. Despite this distinction, Coleman and Harding still defend a society's general right to limit immigration.

Coleman and Harding describe various degrees of strength that refugee and immigrant claims have when seeking membership in a certain political community. Those with the strongest claims are political refugees because they have been stripped of support from their own political community, which is essential to their wellbeing. Family members of those already participating in the desired political community also have a strong claim. They argue that family ties serve to strengthen the political community. Those outsiders that have a strong connection to the culture of the desired political community are also potentially desirable from the perspective of insiders.[19] Coleman and Harding do eventually make the point clear as to the implications of their approach and say,

> Even if borders are arbitrarily or conventionally set, it does not follow that they lack moral significance. . . . We have argued that the very ideas of autonomy and individual well-being that are essential to liberalism presuppose such communities. From this humble, if controversial, starting point we have argued that all refugees have a right to immigrate. . . . Others do not have a right to immigrate.[20]

Coleman and Harding, very much like Walzer, defend the *status quo* of most nations' immigration policies. They do, however, create a moral obligation to assist those threatened by their own political communities. This obligation stems from the premise of their work, namely that participation in a political community is essential for an individual's autonomy and wellbeing. The result is that political refugees have a right

in justice to participation in our political communities, while other types of immigrants have no such right.

Criticisms

The articles examined thus far illuminate the basic philosophic tension in the immigration debate. On one hand we are confronted with the fact that people are born into countries with substantially different levels of wealth, security, and opportunity. As a result, where we happen to be born has a significant effect on our life chances. Morally, it is difficult for us to lay claim to our own nation's wealth to the exclusion of outsiders. The competing argument is that political communities are valuable and necessary for all people. The ability to determine who does and does not belong to a community is the only way that we can ensure that values provided by participation in a society can be dispersed in such a way that having a political community is worthwhile. Further, the tension discussed so far has brought out important underlying themes for this debate. The moral significance of outsiders' wellbeing is framed in relation to our own wellbeing. In addition, we see that societal autonomy and priority is viewed as fundamentally valuable. It is a basic notion in political theory that it is only within a society, including the restrictions societies entail, that that we can have meaningful individual freedom and wellbeing. Wellbeing and autonomy are connected on both sides of the immigration tension.

Despite the benefits we can obtain from a clear understanding of the positions described thus far, there are serious problems with these accounts. First, they do not

actually address the tension that motivates the immigration debate today. These approaches make strong arguments about either the interests of those born into poor states to migrate or the interests of those born into wealthy states to maintain their society, but they do not, as they claim, address the moral tension of the immigration debate. Coleman and Harding describe their argument as controversial, and it may be as it relates to a liberal conception of individualism. But nobody denies that participating in a political community is fundamentally important to people. There are few moral theorists who suggest that we need to return to Hobbes' state of nature for the sake of distributive justice.[21] Nor does anybody deny that we are forced to question the fairness of the world's distribution of wealth, security, and opportunity. Moral philosophers do not see pictures of famine stricken babies in Rwanda and say, 'it serves the little bastards right for being born during a civil war'. The wellbeing of those in acute need is important.

None of the theorists examined thus far have addressed the tension in the immigration debate effectively. The Singers put enormous demands on wealthy nations. They argue that limiting immigration is only legitimate when the wellbeing of insiders is an equally pressing concern as the wellbeing of outsiders. There is an obvious theoretical problem with this approach. The equation suggests a globally equal level of wellbeing and thus a globally equal distribution of wealth, security, and opportunity. Yet, given these circumstances much of the refugee and immigration issues would not exist, as they do today. The case for open borders would be at its strongest from a practical point of view, as the motivation to migrate would be guided by preference and not

need. Immigration demands would be significantly lower, and both the economic and culture concerns over immigration would be somewhat less pressing.

A further criticism is that the approaches taken by the Singers and Scheffler seem to ignore the character and value of group association, and the nature of the special responsibilities we have towards those within our group. John Kane in his essay "Who Is My Neighbor? A Response to Scheffler," says that Scheffler's thought experiment does not effectively portray the way we are confronted with responsibilities. He says that Scheffler's argument,

> seems to portray special responsibilities as excessively voluntaristic products of chosen, rewarding associations. . . . Such impressions seem in contradiction to most people's perceptions of the matter, namely, that we are born into special responsibilities and that we do not choose many of those we subsequently acquire. We are usually made acutely aware of our special responsibilities from the start and are only later instructed (if we ever are) about our more general responsibilities to others.[22]

Kane goes on to say,

> For example, we all discharge our special responsibilities to our children according to our means, and those with larger means typically spend larger – sometimes much larger – amounts of money than those with smaller means. Not only would this principle throw in doubt the legitimacy of all such differentials, but it might even de-legitimize spending on children at low levels. How are we to determine the level above which spending on one's own children becomes illegitimate because it reduces the amount that we would otherwise have available to discharge our alleged general responsibilities toward needier people?[23]

The utilitarian approach seems to say nothing about the way we actually experience relationships, and thus does not do well in convincing us to abandon the ways in

which we give priority to these relationships. As well, the utilitarian argument does not address the areas in which we all have good reasons to want to give priority to our own interests. They argue that wealthy societies have no right to limit access to the wealth, security, and opportunity that is currently protected by borders. However, there is no attempt in their accounts to incorporate or even address the interests of societies in general to self-determination.

Coleman and Harding say, "Even if borders are arbitrarily or conventionally set, it does not follow that they lack moral significance," but they focus only on the moral significance of arbitrary borders and never on the arbitrariness itself. Walzer, Coleman, and Harding argue that societies have a right to exclude others for the sake of societal autonomy, or to protect the benefits associated with participation in a society. By arguing in terms of rights, they effectively ignore the interests of disadvantaged outsiders. There is no room in these approaches to incorporate the interests of those who, through no fault of their own, are faced with the negative effects of global disparity. These theorists do not provide an adequate defense for this kind of absolute exclusion.

Those theorists who focus on the arbitrary nature of the world's distribution of wealth but ignore the values and needs associated with forming societies, fail to investigate the significance of the benefits gained from societal association and societal priority. Likewise, those theorists who argue that states have the right to exclude others in order

to protect their own way of life but do not weigh the needs of outsiders directly with the interests of insiders, fail to address the question of global distributive justice at all.

The wellbeing of potential immigrants is morally significant. If we consider our own wellbeing as morally important we must recognize the wellbeing of those outside our society as morally significant as well. We could just as easily be an outsider rather than an insider. However, it is important that a society has at least some ability to determine who is a member and who is not. Some level of control or autonomy is necessary for a society to be able to act as a group and reap the necessary benefits of group association. Ultimately, societal autonomy aims at maintaining the wellbeing of the society, and it is this wellbeing that attracts refugees and immigrants to wealthy states in the first place. The approaches presented in this chapter take one side of the tension in the immigration debate, and advocate those interests. They do not actually address the tension between the interests of potential immigrants in disadvantaged positions and the interests of members of wealthy states. This tension defines the debate, yet these theorists attempt to eliminate the tension. It is this attempt to eliminate the tension that I will argue is misguided.

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[1] Carens, Joseph H. "Immigration, welfare, and justice" in *Justice in Immigration* Warren F. Schwartzp (ed.) Cambridge: Cambridge University Press 1995. p.9

[2] U.S Department of State, Office of the U.S Coordinator for Refugee Affairs, *Proposed Refugee Admissions and Allocations for Fiscal Year 1983* (Washington, D.C.: 1983) p. 14, quoted in Peter and Renata Singers "The Ethics of Refugee Policy" in *Open Borders Closed Societies.* Mark Gibney (ed.) Westport Connecticut: Greenwood Press, Inc. 1988 p. 116

[3] Peter and Renata Singer "The Ethics of Refugee Policy" in *Open Borders Closed Societies.* Mark Gibney (ed.) Westport Connecticut: Greenwood Press, Inc. 1988. p. 116

[4] Singer, P & R. p. 121-122

[5] Singer, P & R. p. 127-128

[6] Scheffler, Samuel. "The Conflict Between Justice and Responsibility" in *Global Justice.* Ian Shapiro and Lea Brilmayer (eds.) New York : New York University Press, 1999. p. 97-98

[7] Scheffler, p. 88-91

[8] Scheffler, p. 91

[9] Walzer, Michael. *Spheres of Justice*. New York: Basic Books, 1983. p. 9-10
[10] Walzer, *Spheres of Justice*
[11] Walzer, p. 11
[12] Walzer, p.12
[13] Walzer, *Spheres of Justice*
[14] Coleman J & Harding S "Citizenship, the demands of justice, and moral relevance of political borders" in *Justice in Immigration* p. 35
[15] Coleman & Harding, p.36
[16] Coleman & Harding, p. 41
[17] Kymlicka, Will *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Claredon Press, 1995. p. 83
[18] Kymlicka p. 93
[19] Coleman & Harding p.46-51
[20] Coleman & Harding p. 52
[21] Even anarchist theorists generally do not deny that some form of a community is valuable.
[22] Kane, John. "Who is My Neighbor? A Response to Scheffler." in *Global Justice* p.110
[23] Kane, p.112

CHAPTER 2

Taking the Tension Seriously

In the previous chapter I identified the basic underlying tension that must be addressed in examining the legitimacy of limiting immigration. In being critical of the works examined thus far, I have argued that this tension is significantly more complex and problematic than is often represented in the immigration debate. The tension that exists in the immigration debate is not adequately addressed by advocating either the interests of disadvantaged outsiders or the interests of advantaged insiders. Instead, both of these interests have to be incorporated into the debate. In this chapter I will survey some theorists speaking to immigration issues who seem to take the tension described in the previous chapter more seriously. I will present arguments that take both the wellbeing of outsiders in disadvantaged positions and the autonomy of insiders in advantaged positions to be morally significant. The aim of this exercise will be to better describe how we should argue about the legitimacy of immigration controls.

In *Free Movement: Ethical issues in the transnational migration of people and of money*, edited by Brian Barry and Robert E. Goodin, arguments regarding immigration policies from different theoretical perspectives are presented. I focus on the liberal

egalitarian perspectives of Joseph Carens and James Woodward. In general, liberal egalitarians are faced with a tension between two values, liberty and equality of opportunity. For this reason, this theoretical approach is sensitive to the tension that exists in moral questions regarding immigration controls.

Carens in "Migration and morality: A liberal egalitarian perspective," argues that liberal egalitarianism should be committed to open borders. He argues that liberal egalitarians aim at promoting people's ability to pursue their own life goals free of constraints beyond the duty not to interfere with other people's freedom to pursue their own life goals. However, he notes that liberal egalitarians are also committed to creating equal opportunity among people. He says, "liberal egalitarians want to keep actual economic, social and political inequalities as small as possible, partly as a means of realizing equal freedom and equal opportunity and partly as a desirable end in itself."[1]

Based on the underlying principles of liberal egalitarianism, Carens argues that the theory supports a basic right to free movement. Speaking to the inequality of opportunities created by one's origin of birth, Carens says, "Citizenship in the modern world is a lot like feudal status in the medieval world. It is assigned at birth; for the most part it is not subject to change by the individual's will and efforts; and it has a major impact upon that person's life chances." [2] These circumstances, as Carens describes them, are clearly contrary to the basic principles of liberal egalitarianism. Carens goes on to note that freedom of movement is considered a basic right within

liberal democratic states, and that attempts to limit this freedom within the state would seem to us to be extremely objectionable. Carens sees little reason why we should be any less offended by the limits imposed by state boundaries. Equality and liberty are not values that are dependent on the distinctions created by borders, according to Carens.[3]

Carens does however consider circumstances where limiting immigration might be legitimate. He uses two interesting examples of when liberal egalitarians might want to allow for closed borders. The first example he uses is that of Japan. He argues that to demand that Japan adopt more open borders and become a multicultural state like Canada is to argue that our model of a society ought to be adopted by all societies. Carens says that the Japanese people rightly view their culture as distinct. He notes that Japan is relatively homogeneous, and that the Japanese people experience a strong sense of common culture. Carens suggests it would be reasonable to accept that for the Japanese, maintenance of their distinct character is fundamental to their life goals.. Their culture gives, "meaning and depth to their lives."[4] Carens argues that the Japanese desire to limit immigration to protect their culture is legitimate from a liberal egalitarian perspective, and he argues that this desire ought to be weighed against the claims of potential immigrants and refugees.[5]

Carens says that there are no reasonable arguments for excluding refugees, as their needs are of such an acute nature that almost any state would have to accept them. However, immigrants may be denied entry given certain circumstances. Carens

focuses on the reasons why immigrants want to come to Japan, and weighs these reasons against Japan's claims to protect its culture. He argues that if immigrants wish to come to Japan to pursue marginally better economic opportunities yet have other options within their own states or in other more culturally diverse states, Japan may legitimately choose to restrict the entry. However, those who pursue entry based on family ties and those who are already within Japan cannot be excluded for the sake of cultural protection. Carens acknowledges that the circumstances he describes are somewhat different from those that motivate most immigrants today. The disparity in wealth, security, and opportunity that exists between states today cannot be described as marginal. However, his argument is simply to show what a just exclusionary policy might look like.[6] A real world, and one should note intra-state, example is that of Native Americans who wish to preserve their way of life within a defined area. Carens says,

> they cannot maintain this culture if any significant number of outsiders come to settle on their land and the reasons the outsiders have for coming (e.g. to use the land for recreational purposes) generally seems far less compelling than the reasons the natives have for keeping them out.[7]

Carens identifies cultural preservation in the face of weak claims on the part of potential immigrants as one case in which a closed border policy could be acceptable.

The second example Carens looks at is the case of Canada's public healthcare system. Carens notes that Canadians view their health care system as fundamentally valuable. In comparison with the US system, most Canadians prefer a publicly funded approach. Carens asks if it is justifiable for Canada to close its borders and/or access to its

healthcare system to Americans. He notes that because of the difference in population between Canada and the US, an influx of American patients would put a significant strain on the Canadian system and might even jeopardize its existence.[8]

Carens argues that limiting access to needy Americans is not justified. He looks to intra-state migration to make his argument. Carens suggests that we do not find it morally defensible to prevent people from migrating to a more socially supportive part of their own state. Speaking to the contrast between intra and inter state boundaries he says,

> If the two cases are different, how and why are they different? I find these questions puzzling, but in the end I cannot see that sovereignty makes that much difference from a liberal egalitarian perspective. Despite my attachments to Canada's social welfare policies, I do not think they justify restrictions on movement.[9]

Carens does allow for some exclusionary policies, but he says, "it is not the state as such that gives rise to a claim to exclude, but rather the existence of a community with a distinctive and valuable way of life that would be threatened by immigration."[10] Carens views defending distinct and valuable cultures as legitimate, while defending economic and social advantage as illegitimate. In response to Carens it would be valid to note that it is precisely the economic and social benefits that wealth, security, and opportunity provide that make Western societies distinctive, valuable, and attractive to immigrants. Why does Carens view defending these kinds of values by closing borders as unjustified?

Carens argues that economic reasons for exclusion are illegitimate while cultural reasons maybe legitimate because of his commitment to equal opportunity. Carens does not view Canada's wealth as a distinct value, but as a distinctly advantageous opportunity. However, he says certain restrictions on movement are clearly justified, like "a right to exclude others from one's home (assuming everyone has a home or a reasonable opportunity to obtain one)."[11] But what if one's home provides significantly more opportunities than another home? What is this distinction based on? Carens' analogy seems to show that at some level we have to be able to distinguish between insiders and outsiders for the sake of pursuing our own interests. The force of Carens' argument comes from the notion that we are all born into cultures, but we are not all born into the kind of wealth, security, and opportunity enjoyed in Canada. This is a reasonable position, but Carens does seem to have a problem in that he does not examine precisely why it is at the state level that exclusion for economic reasons becomes illegitimate.

Examining the work of James Woodward in "Commentary: Liberalism and migration," we can better respond to these questions and further explore the moral tension at work in this debate. Woodward hopes to give us a "persuasive rationale – within a liberal egalitarian framework – for limiting free movement across borders."[12] He presents three areas in which we could reasonably expect to see immigration have negative effects for the host country. The first is in the realm of wage competition. He argues that open border policies would likely result in the lowering of wages for those in affluent states, especially for those who are the least well off. The second is that

social services would collapse given open border policies, and lastly that the ideals and politics of an affluent state, liberal egalitarian ideals, would be threatened.

Carens' view is, that there are few circumstances where the above can be called upon to defend limiting immigration. Woodward uses these examples as a way of directly challenging Carens' theoretical approach. Woodward says,

> There is a tendency . . . to think of the moral problem concerning immigration as one of altruism versus self-interest. . . . As I see it, the issue is largely one of conflicting obligations or moral claims – the claims of immigrants to enter (and of present citizens who may benefit from their immigration) versus the claims of other citizens to various kinds of social services, benefits and opportunities which may be undermined by extensive immigration.[13]

He uses a parent and child relationship to make his point. Woodward says that we are strongly attached to the notion that we can provide benefits to our own children to the exclusion of other more needy children, even when the benefits are well in excess of those enjoyed by most children. We do not feel obligated to provide a basic level of support to as many children as possible instead of providing a high level of support to our own children.[14] Woodward thinks it would be inappropriate to expect parents to adopt as many children as was financially possible for the sake of equal opportunity. He says, "The fact that by adopting you would fail to meet obligations which are already in place to your present children is a good (moral) reason for not adopting."[15] Woodward notes that Carens himself supports this notion when he suggests that states are more strongly obligated to not expel guest workers and illegal immigrants, than they are to admit new immigrants. [16] Actual relationships seem to make a difference.

Woodward notes that John Rawls in his influential book *A Theory of Justice* requires that principles of justice developed in the original position must be of a sort that one could reasonably expect people to adopt once they take their place in the world.[17] Woodward points out that much of what Carens argues for fails this test. Taking the example Carens creates regarding the Canadian healthcare system, it is clear that Canadians would never willingly endorse immigration policies that could result in the destruction of public healthcare. Carens' argument expects something of Canadian society, or any society with public healthcare, that it would never be motivated to do. These factors help to explain why Carens' example generally seems odd.

Carens does try to find a way to make this healthcare example more appealing, and he uses intra-state freedom of movement to provide an intuitively appealing argument for freedom of movement generally. Woodward comments on this approach and says,

> Much of the force of this argument derives, I believe, from the tacit assumption that to respond to it we must show that there is some deep positive moral significance to facts about nationality which ground the above asymmetry, and the suspicion that no response of this sort is available within a liberal egalitarian framework. . . . This is not the response I have attempted to make. Rather, I have tried to show that even if no such positive argument of the sort envisioned by the Romantic Nationalism is available, there none the less may be defensible reasons, having to do with obligations incurred against a background of non-ideal institutions and behavior, for a different treatment of internal and external migration. Restrictions on entry, in my argument, have the status of non-ideal, second best solutions to problems of preserving institutions and policies we care about in an imperfect world. [18]

The healthcare example provided by Carens proves particularly useful for Woodward. For Carens, morality dictates that Canadians must open their healthcare system to

foreigners. Since Canada has a public healthcare system not enjoyed by much of the world, it can be expected that many outsiders will wish to use Canada's healthcare system. Consequently, demand will outstrip resources and the system will collapse. The motivation for foreigners to come will have been destroyed. It does not make sense to argue that we must permit universal access to our healthcare system because of a commitment to equality of opportunity, even when we know that opening access in this way will result in nobody having an opportunity to benefit from our healthcare system. Carens' view is odd because his notion of equal opportunity actually results in all people having no opportunity to access public healthcare. Woodward maintains that this view is not morally required.

Woodward argues that non-ideal situations may create valid moral obligations that would not be so in an ideal situation. Woodward's approach attempts to show how a non-ideal situation can morally legitimize limits on immigration. Woodward argues that in order for liberal egalitarians to maintain the values and institutions that they find worthwhile in an otherwise imperfect world, they must exclude people who may have legitimate claims to participate in those institutions. Carens' example of the Canadian healthcare system fits well into this argument, and the example does more to hurt Carens than it does to help.

On careful inspection we can see that much of Woodward's argument is an attempt to use realist arguments to define the possible realm of moral action in the "real world". He argues that his approach provides a "second-best" argument, but that it does not

challenge the notion that morality may require something close to an open border policy given ideal circumstances. Robert E. Goodin in his essay "Commentary: The political realism of free movement," is critical of Woodward-type arguments. He describes "second-best" approaches to morality as part of a realist strategy to show that there are valid excuses for certain moral omissions. Goodin shows that in general realist arguments suggest that opening borders is "politically impossible." Goodin argues that,

> to say that something is 'politically impossible' is merely to say that it entails unacceptable costs for certain crucial political actors. . . .The key question then becomes not whether it is possible for them to bear the costs, but rather whether it is somehow reasonable to expect them to do so.[19]

As was noted earlier, Woodward appeals to a parent child analogy that speaks to the intuitive problem in Carens' argument. The analogy Woodward presents seems to work, but it ultimately fails to free us from questions about the kinds of costs we ought to incur for the sake of others in need. For example, it seems true that we are morally permitted and possibly obligated to provide our own children with a university education to the exclusion of others. A university education is a luxury, as the majority of people never have the opportunity to attain this level of education. Yet, providing our children with new designer clothes and sports cars so that they can be popular at university does not seem justifiable to the exclusion of others' need to eat. Here at the very least there is an issue of legitimacy that must be addressed. Woodward does well to pick on Carens' healthcare example, as it is physically impossible for Canada to provide health services to the rest of the world. But, this type of circumstance does not speak to the main thrust of Woodward's argument. He says,

> While I fully agree that present arrangements concerning national sovereignty are morally defective and non-ideal, it does not follow that moral requirements based on such arrangements lack force. . . Non-ideal institutions can give rise to real, weighty obligations.[20]

Goodin notes that this argument does little to help us understand what we can and cannot do. We are still forced to ask when these non-ideal obligations are justified and when they are not.

The importance of Goodin's argument for skepticism towards realist excuses can be seen clearly in some of Woodward's circular arguments for morally legitimate reasons for exclusion. In arguing for immigration limits Woodward says, "One consequence of such immigration may be the rise of political parties that attempt to exploit racial tensions, a consequence which is very much in evidence in France and Germany." [21] However, from a liberal egalitarian perspective it is ridiculous to defend closed border policies because they ensure the appeasement of racism. Woodward's argument might be an example of how we can appease racism in the "real world", but it cannot be defended on moral grounds. His argument seems to be that there are racist political parties, racism is bad, and we should limit immigration to prevent racism. From a moral perspective the problem is racism not immigration. One cannot argue that racism is bad and therefore the state ought to implement immigration policies that treat people differentially based on race. Woodward seems to be saying that a racist immigration policy would be the least bad alternative in societies where there is a potential for racism. However, Woodward never defends how racism because of

racism can be the least bad alternative in moral terms, nor could this view be defended in moral terms.

There is a huge disparity in the wealth, security, and opportunity afforded to people from different countries. There is also a strong sense that simply being born outside of a political border is not a good reason for a widely reduced level of wealth, opportunity, and security. As well, disparity serves as a great motivator for poor people to move to rich countries. The motivation is so significant that there are good reasons to believe that rich nations could not expect to maintain anywhere near their current levels of wealth if open border policies were adopted. There is a strong sense that despite the morally significant plight of people who would benefit greatly from open borders, people from wealthy nations cannot be expected to give up the very things that make their nation attractive for the sake of addressing outsiders' claims to access. The huge disparity in wealth, security, and opportunity is the justification for both opening borders and closing borders.

Carens' healthcare example is easy to pick on because his moral demands for universal access destroy everybody's opportunity to access the healthcare system. However, Woodward's theoretical arguments of physical impossibility used to defend a general right to exclude is as untenable as Carens' healthcare example. This approach does not defend the motivation for exclusion because it does not speak to why the costs at issue are too high to pay. It seems that the main question in the immigration debate is when

is it morally legitimate for us to say that the costs associated with either limiting immigration or opening borders are too high.

The survey so far also helps us to focus on how we can determine what costs are most important in the debate. An honest investigation of this topic will have to see wealth, security, and opportunity as the most important costs or values in the immigration debate as it exists in the world today. It is these values that motivate mass immigration, and causes concern in host countries. Many of the articles examined thus far take it to be obvious that we have no legitimate basis for excluding poor outsiders, or conversely that we do have a legitimate basis to protect our way of life despite the interests of outsiders. I do not see that there is anything "obvious" in this debate. Everyday we exclude the poor from our lives and from our resources. As I walk home from work each day it would be an exception not to encounter a street beggar. Of course I cannot, I think to myself, give money to everybody who asks me, but of course I can. It is only my plans with regards to my own wealth that prevent me from doing this. It seems to me that I can legitimately defend the way I exclude the poor from my life and my assets for some but not all the plans I have for my own wealth. At the same time, I cannot confuse my responsibility for the circumstances of poverty, which is very small, with what morality might dictate to be my obligations to assist those in need. As I pass a homeless alcoholic on the verge of frost bite, I do not see myself as culpable for his situation in anyway until I, like all the other passers by, hurriedly step over him on my way home to a warm meal. Then I am culpable for something, although I am not sure what. At the very least, I am culpable for mentally

blocking out the reality of poverty from my everyday thoughts despite the fact that extreme poverty is part of my everyday reality.

Another important cost to be discussed in this debate is that of cultural survival. Here much of the debate is focused on preserving a culture that defines the lives of those who live within it from the changes mass immigration will bring. It is important to note that this is not defending the existence of cultures, communities, or institutions, but a defense from changes, often unpredictable changes, in cultures, communities, and institutions. It does not seem plausible that immigrants who struggle to gain access to a state more liberal than their own will then want to destroy liberal institutions. Without this intention it difficult to see how they could be the catalyst for the destruction of liberal institutions, while it is easy to see how immigration could destroy social services and change the character of a culture. Here again it is not clear that there are obvious answers to the problem. Some seem to think that defending culture amounts to an excuse for defending wealth, while others see forcing change upon a culture as a form of moral imperialism. Interestingly, in the debate outlined above Joseph Carens took both positions. Carens' views point to the confusion that exists in arguments that aim at defending culture from the consequences of mass immigration. Take, for example, a country like Sweden with a very small population, an extremely long and rich history, a strong cultural preference for a wide range of public social supports, and enormous wealth. Any significant influx of immigrants, lets say four million people into a country of nine million, would significantly alter the character of the society. Carens uses a similar example of Native Americans who

cannot hope to maintain any sense of collective culture if they are saturated with other Canadians on their reserves. Is the fact that Swedes are rich and Natives Americans are not significant enough to exclude Swedes from the right to protect their way of life?

Both Carens and Woodward speak to the costs of closed and open border policies, and have led us to a better understanding of the way these conflicting costs are at the center of the moral debate about immigration. Carens and Woodward make arguments that attempt to incorporate both sides of the tension in the immigration debate. Carens' example of legitimate immigration limits requires a direct comparison between the interests of insiders and outsiders. Woodward is even clearer on this point when he says, "the issue is largely one of conflicting obligations or moral claims – the claims of immigrants to enter . . . versus the claims of other citizens to various kinds of social services, benefits and opportunities . . .."[22] Carens and Woodward move away from attempts to show that only one side of the tension has significant moral implications. Oddly though, both Carens and Woodward are for the most part concerned with a state's right or lack of a right to limit immigration. Carens wants to establish that states have in general no right to limit immigration. For Carens, liberal egalitarianism is strongly supportive of open borders. Carens does allow for some immigration controls where disparity is not a strong motivational factor for migration, and the society in question is motivated by a desire to protect a distinct culture unable to cope with mass immigration. However, Carens' concessions are exceptions to the general principle of free movement. Woodward wants to establish a general right to limit immigration

despite global disparity. He argues that the immigration debate should be understood as one of competing claims from both insiders and outsiders. Instead of analyzing the merits of these competing claims, Woodward uses a strategy that focuses on the moral significance of non-ideal circumstances. Woodward argues that societies in general have a right to limit immigration because circumstances of disparity force them to protect the interests of insiders to the exclusion of outsiders.

It is strange that theorists who focus a great deal of attention on the costs and benefits associated with immigration controls would also argue in terms of a general right or lack of it to limit immigration. If both the interests of outsiders and insiders are morally significant in important ways it does not follow that a legitimate immigration regime would entail a right to limit immigration or no right to limit immigration. The confusion I have described here arises from a misunderstanding of the kind of theoretical problems immigration controls present.

In the next chapter I attempt to define what kind of a theoretical problem immigration evokes. Specifically, I will argue that it is correct to view the immigration problem as one of competing costs, but that this approach cannot lead to a discourse about a general right or lack of a right to limit immigration. The aim of the following chapter will be to establish the basis for an argument about legitimate and illegitimate forms of immigration control.

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[1] Carens Joseph H. "Migration and morality: A liberal egalitarian perspective" in *Free Movement: Ethical issues in the transnational migration of people and of money.* Brian Barry and Robert E. Goodin (eds.) London: Harvester Wheatsheaf, 1992. p. 26

[2] Carens, p.26

[3] Carens, p.27-28
[4] Carens, p. 37
[5] Carens, p. 37
[6] Carens p 36-40
[7] Carens, p40
[8] Carens, p. 40-43
[9] Carens, p. 42
[10] Carens, p. 40
[11] Carens, p.27
[12] Woodward, James. "Commentary: Liberalism and migration" in *Free Movement.* p.68
[13] Woodward, p. 73
[14] Woodward p. 73
[15] Woodward p.73
[16] Woodward, p.74
[17] Rawls, John. *A Theory of Justice.* Oxford, Clarendon Press, 1972
[18] Woodward. 80
[19] Goodin, Robert E. "Commentary: The political realism of free movement" in *Free Movement.* p. 253
[20] Woodward, p.74-75
[21] Woodward, p.70
[22] Woodward, p. 73

CHAPTER 3

What Kind of a Moral Problem is Immigration Control?

All of the theorists examine thus far suppose that societies either have a right or have no right to control immigration, as they see fit. Immigration controls are, they say, either just or unjust. I do not, however, believe that the problem of immigration that I have presented can be dealt with in this way. The legitimacy of immigration controls is not a problem of justice as it is normally understood.

Much of political theory and moral philosophy asks what would be just or what would be right. An example of this kind of a moral problem is abortion. The question of abortion is deeply problematic for moral theorists because what is just brings forth so many competing claims. Is the fetus to be considered a person with full rights? Does a pregnant woman have a right to control what happens to her body regardless of others' claims to that body? Similarly, the question of a just society or how we should organize ourselves as political beings is dominated by competing claims. Some feel that individual interests are prior in importance to any element of a society, and that justice demands that we organize in such a way that individual autonomy and/or equality is protected. Others argue that the interests of a community are most

important, and that society ought to reflect the priority of the community. The immigration issue addressed in this work is not this kind of a theoretical problem.

The problem of immigration does not come out of a question about what would be just and thus what general rights societies or individuals have. There are competing arguments, very much like those of justice in general, about individual interests versus the interests of communities, but the immigration debate does not come out of a question about what is just? Instead, the entire problem comes out of agreement that it is unfair that origin of birth has such significant implications on individuals' life chances. None of the theorists examined argued that the circumstances that create wide divergence in wealth, opportunity, and security are fair. The reason there is interest in the normative problems of immigration is that the global distribution of wealth, security, and opportunity is not fair to those who come into existence and are faced with the negative effects of pre-existing distributive realities. What makes the tension in the immigration debate problematic is the environment of global disparity, and a judgement that this disparity has significant moral implications. Even those who defend closed borders tacitly acknowledge this point. They do this by arguing for closing borders based on cultural security or the need for societal self-determination. None argue that the reasons for the immigration problem, unequal and random distribution, are actually not morally significant issues. The theoretical problem of immigration arises within a set of circumstances that are unfair, but these circumstances are not unjust in the way some theorists wish to establish.

If someone born into societal poverty, violence, and lack of opportunity has relatively limited life chances as the result of the chance of birth, then someone born into wealth, security, and opportunity has relatively good life chances for the same reason. There is no issue of justice between these two people at this level. The advantaged and disadvantaged are not responsible for the circumstances they are born into, and thus neither is responsible for the circumstances of disparity. The disadvantaged born into poverty do not have an inherent claim in justice against those born into wealth. At the same time, those born into wealth do not have an inherent right to this wealth to the exclusion of others. The open borders principle holds that this disparity is itself unjust, and for this reason societies have no right to control immigration. However, they have not established that these unfair circumstances are also unjust. Those who hold the closed borders principle argue that we as a society have, on moral grounds, a right to the social advantages we enjoy to the exclusion of others. But how can such a right exist when the advantages in question have been attained by chance. It is difficult to see how we can have a right to chance, or how chance can be inherently unjust. The immigration debate comes out of agreement that the disparity between countries is unfair, but issues of justice do not arise until we begin to examine the ways in which immigration controls perpetuate disparity.

It is inappropriate to try and establish whether a society has a right or no right to control immigration. The immigration problem cannot be treated in the same way as other problems where there is an inherent question of justice, like the abortion problem. In the case of abortion the debate comes out of a question about what is just

and theorists attempt to solve this question. It is not possible to solve the underlying source of the political problem of immigration. Solving the problem of global disparity is simply beyond the scope of the question at hand. However, the theorists examined in the previous two chapters do attempt to try and solve the problem of immigration controls when they attempt to establish either the unconditional rights of a society to have autonomy over its borders, or the unconditional rights of potential immigrants to have access to other societies. These approaches do not address the tension between the interests of outsiders and insiders. Instead, they either suppose the elimination of global disparity, or argue that global disparity does not have any implications on the way a society can legitimately control immigration.

The immigration debate is only significant given circumstances of acute global disparity that creates a lack of fairness in individuals' relative life chances. The problem of immigration controls, as it exists today, is not addressed effectively if we suppose an elimination of unfair circumstances, or ignore the moral significance of these circumstances. Imagine the debate without the defining element of global disparity. If there were an equitable distribution of wealth, opportunity, and security, the motivation for migration would not be based on life chances. Presumably the potential for migration would be greatly reduced, and not focused on any particular region. Those who argue for free movement would have much stronger claims in this equitable world. Kymlicka argues that we are willing to limit liberty in order to ensure that our society is not saturated with newcomers. Yet, if the motivations to migrate were significantly reduced the value of expanding liberty would certainly outweigh the

virtually non-existent risk of being overrun. Kymlicka would have to defend open borders. The Singers' utilitarian calculation would no longer place any obligation on states to consider the life chances of outsiders in relation to those of insiders. Here, the interest in cultural and societal protection could certainly, as they argue, take precedence over others' claims to access. Outsiders already have wealth, opportunity, and security provided to them within their own states and cultures. Closing borders denies them access only to those things to which they already have access. I do not intend here to defend either of these positions. I only want to show that if we eliminate the circumstances of disparity that motivate the immigration debate today, we end up with a different kind of moral question. For the theorists mentioned above, the result is a complete reversal of their arguments. The immigration tension that currently exists as a deeply problematic question only exists by virtue of unfair circumstances, unlike other moral questions that have inherently deep moral tensions. If there were an equal distribution of wealth, opportunity, and security the question of the legitimacy of immigration controls would be much different, much less problematic, and much less interesting for moral philosophers.

The description I offer concerning the source of the moral problems in the immigration debate is important in understanding why the tension in this debate has not been addressed effectively. Those who argue for open borders or virtually open borders derive much of the force of their argument by way of a clear description of the global distributive problem, particularly by describing the plight of individuals born into poor circumstances. Carens presents one of the most powerful images in the

debate when he compares citizenship in the modern world to the feudal system of the medieval world. All the force in the argument that borders should be open comes from simply describing the lack of fairness in the distribution of wealth, opportunity, and security. This approach works well in showing that there is a moral problem to address in examining our reactions to unfair circumstances. The Singers' and Carens' envision the elimination of disparity, but the elimination of global disparity is an elimination of the source of the tension in the immigration debate. This might be useful in a broader theoretical context, but it does not help us with the political problem at hand. If I say that there is a deep tension between the interests of outsiders to equal opportunity and the interests of insiders to autonomy, the response to dealing with the tension cannot be 'just get rid of the source of the tension'. The tension must be viewed as a persistent tension that defines the problem.

A description of the problem of global disparity only goes so far in challenging the moral legitimacy of closed borders. This description shows that there is a real moral concern with the virtually universal practice of immigration control. We must still ask how much wealthy states must assist the disadvantaged by opening borders. On the one hand, we have those who challenge current immigration controls, and say that they go directly against the notion of individuals' equal moral worth. On the other hand, we have a defense of immigration controls that says they are legitimate because of a need to maintain social identity or the ability to act on various societal aims. Unfortunately, those who defend closed borders focus a great deal of attention on arguments for defending cultural and social identity and practices. Theorists such as

Coleman and Harding avoid speaking to the distribution of wealth, security, and opportunity, as they find themselves forced to look for an area in which they can defend closed borders without being confronted with the legitimacy of exercising this control. The solution is to focus on culture. By doing this a theorist can avoid challenges about the fairness of resource distribution. Instead, they argue that they are defending a valuable and distinct resource that is largely defined by citizenship. This move is not helpful as far as the actual political problem. The immigration problem is morally significant because of the circumstances of acute disparity in wealth, opportunity, and security between countries. If the entire problem of immigration controls comes out of a question about the distribution of these values, it follows that the moral discourse should focus heavily on these values. The weakness of the societal argument, is that it does not address the inherently unfair circumstances that motivate the debate. I do not deny that questions of cultural or societal identity are important, but they are secondary. They are secondary because they are not the motive for the debate but come out of the debate.

The discourse in the immigration debate has not yet focused on the most significant issues to be addressed. Arguing for open borders has amounted to a description on the underlying source of the moral problem. By focusing on the lack of fairness in the global distribution of resources, they have not been able to present clear and specific arguments about wealthy peoples' obligations in justice to assist outsiders by opening borders. Arguing for immigration limits has amounted to a resistance against using the issue of immigration to attack the broader problem of global distributive justice. They

argue that despite this disparity there are legitimate reasons for closure. In a world of distributive inequality, open borders do not represent a solution to the problem. More importantly, the moral significance of priority is not made irrelevant by the existence of disparity. Still, a strong argument for societal self-determination is not a trump that eliminates the possibility of a more global moral assessment. If it is true that those who are born into poverty, danger, and diminished opportunity suffer from arbitrary circumstances, it is also true of those born into wealth, security, and opportunity. Those who argue for closure must also argue for laying claim over arbitrarily realized advantages. The existence of disparity between people of different countries does not automatically brings forth problems of distributive justice. However, once we begin to talk about immigration controls designed to keep poor people out of rich nations, there are significant issues of distributive justice.

In order to better understand the immigration debate one must first acknowledge that the debate is only problematic given circumstances of global disparity, and a judgement that this disparity has significant moral implications. Doing this will force theorists to speak more directly to the costs associated with both closed and open border policies. It is inappropriate to use a rights discourse to establish if immigration controls are in general just or unjust. This approach cannot address the morally significant claims of both disadvantaged outsiders and advantaged insiders. The argument to follow will try to show why theorists should be talking about costs, instead of general rights, in order to advance thought about immigration controls.

Looking at a small-scale example that speaks to various aspects in the immigration debate will help in this endeavor.

A Canadian aid worker, Karin, goes to Ethiopia to assist with famine relief. She is a doctor with a family back home, but decides to dedicate one year to the cause of helping the sick and starving. In an aid camp she lives, eats, and socializes with the other international and local camp workers, while she works on the starving and sick. Compared to most in the camp she has significantly more and better food, and a much higher standard of living. Does Karin deserve to eat, survive, and thrive when a baby, maybe two, maybe ten could be saved with her share of food and her access to medical attention? Should she starve instead? The answer seems to be no. Here we can clearly see the way real world political problems will have significant implications on the type of philosophic problems immigration controls entail. Karin is of no greater moral worth than others in the camp are. She is physically in direct contact with the disparity in distribution that defines the moral tension of the immigration debate. In this example the doctor has put herself in direct contact with these circumstances of disparity for the purpose of assisting. It might be an interesting philosophic problem to ask whether she deserves to receive a greater share of resources than others in the camp do. It certainly is an example that fits well into the utilitarian or global equality arguments we have examined thus far. But how can we punish the altruistic doctor for doing something that is highly praiseworthy? We simply cannot.

In practical terms it would be impossible to motivate anybody to assist in foreign aid projects if we did not guarantee those aid workers a certain level of sustenance. A utilitarian might argue that the reason we cannot allow the foreign doctor to starve with the local people, is that the benefits associated with her assistance will outweigh the potential benefit from her share of resources. But what if this doctor turned out to be ineffective in her work? Should she then starve? Again the answer seems to be no. She should go home and allow her resources to support a more effective aid worker. However, the costs of her return will certainly represent the lives of several camp members. Why does Karin get to go home given the costs? Why not impose a strict utilitarian calculation on the situation?

The doctor does not deserve to suffer, but nobody in the camp deserves to suffer. The issue of who ought to suffer will not take us forward in understanding this example. The example is described in such a way that we get the sense that Karin is taking resources away from the Ethiopians, but this is not the case. The resources that Karin and the Ethiopians have had access to over their lives, at the societal level, is the result of where they were born. Karin was born into wealth, and she took full advantage of this opportunity. Should she have to now give up those advantages for the sake of equality? There is further resistance to this argument due to the moral assessment of Karin. In circumstances of wide disparity Karin has taken her self out of the wealth, security, and opportunity that defines her life. She has done this precisely for the sake of assisting those in disadvantaged positions. Given that she is not bound by any legal or cultural obligations to do this, we have to assess her actions as very praiseworthy. It

might be argued that Karin is praiseworthy for her individual actions, but unfortunately for Karin what is just will require her to incur significant costs. However, imposing the weight of ultimate justice on this example will not work. Like the immigration debate, the Ethiopian camp example arises out of circumstances that are not fair to those afflicted with famine. Karin is neither the cause nor the cure for the disparity in the camp, and she cannot bear the weight of responsibility that open border arguments suggest. In this example, we can see clearly that the distribution of resources is ultimately not fair. There is no good reason for Ethiopians to starve given the wealth in the world. But we cannot simply impose what would be fair in the broadest sense onto the more narrow sense of the camp problem and call it justice. The camp problem takes us away from strictly philosophic considerations and binds us within a political problem.

We cannot impose the full weight of global distributive justice on Karin in arguing for her to incur costs. Karin is praiseworthy not only from the perspective of those in advantaged positions, but also for the perspective of Ethiopians themselves who are in a disadvantaged position. Karin chooses to incur costs in order to assist others, and it seems safe to assume that Karin will continue to be motivated to assist to varying degrees. If Karin is generally praiseworthy for her actions, it seems wrong to impose further costs upon her instead of on those that do nothing and are thus blameworthy. Karin is praiseworthy for her actions because she incurs costs beyond what would be a legitimate level to expect for the sake of others wellbeing given the circumstances. She is motivated by the moral implications of others suffering in relation to her own

wealth. The resistance to expecting further high costs from Karin is due to an assessment that these further costs would be too much to ask. Specific arguments for why the costs would be too much to ask for will be examined in the following chapter. What is important to establish here is that the immigration problem, like the camp example, is one where unfair circumstances are presumed in the theoretical problem itself. The goal is not to solve the problem of unfair distribution, but to assess our reactions to these problems. This moral assessment has a great deal to do with what are and are not morally legitimate costs to expect in circumstances of disparity.

I was critical of Woodward for arguing that non-ideal situations create moral obligations that we otherwise could not defend. I was not, however, critical of the general argument that the immigration debate is defined by non-ideal circumstances. The circumstances that create the normative problems regarding immigration are clearly non-ideal. Nevertheless, it does not follow that we cannot develop strict moral assessments of our actions, even though they are limited by non-ideal circumstances. Woodward has a sense of this argument but he does not make a clear effort to assess morally the kinds of non-ideal obligations he describes. If he had, he certainly could not have used a morally blameworthy trait such as racism to defend closing borders. By requiring a serious moral assessment of peoples' responses to distributive problems, we force moral philosophers to have a clear understanding of the political problem. The entire project forces the moral philosopher to speak directly to the problem of immigration as it exists. If moral philosophers want to speak to real political problems they cannot simply dismiss these problems as unjust and move on.

CHAPTER 4

Legitimate and Illegitimate Immigration Control.

In this chapter, I argue that wealthy states must have immigration policies open enough that they incurs costs from immigration. The argument here is largely concerned with how much a society can legitimately limit immigration. This is a narrow but important focus with regards to the various issues associated with immigration controls. In examining how closed a state can legitimately be, I will present an argument that does put significant demands on wealthy states. These demands challenge the *status quo* of most wealthy state's immigration policies, and the way the topic is most often addressed by political theorists. In the introduction of this work I noted that Canada, like many other wealthy states, does not incur significant costs from its immigration policies. On the whole Canada needs immigration and benefits from its immigration policies. Requiring Canada to open its borders to a level where it incurs costs from immigration would certainly result in a higher level of immigration, and a significantly higher level of acceptance of those potential immigrants in the worst off positions. In theoretical terms, the result is a reversal of the standard approach to investigating the legitimacy of immigration controls. I argue that absolute sovereignty over borders should not be assumed to be a state's right. Instead, there have to be legitimate reasons for limiting access to the state.

Many of the theorists who argue for open borders or more open borders attempt to chip away at the generally held belief that a state legitimately has sovereignty over its borders. Closed border theorists attempt to defend against this attack, and they argue that states do have a right to control their borders. It is true that the acceptance of state sovereignty over borders is now deeply entrenched in our state system. However, it is not necessary that theoretical investigations mimic the established view of borders. As I argued in the previous chapter, when one is motivated by the significance of acute global disparity the immigration debate cannot be addressed effectively by arguing for a state's inherent right to control (i.e. close) borders, or for disadvantaged outsiders' inherent right to access. Ideal circumstances would be those where limiting immigration was not necessary or it did not affect people's life chances, but this debate is not the immigration debate we face today. Therefore, the argument in this chapter avoids two positions that dominate the normative debate surrounding immigration controls. The first position I avoid is one that says societies have no right to control immigration as a principle of justice. The second position I avoid is the view that societies have an unqualified right to control immigration. I also avoid an argument that says some people have a right to immigrate while others do not. It is inappropriate to attempt to establish general principles of justice that disperse rights based on immigrant classifications that ultimately leads to those who have an inherent right of entry and those who have no right. Like the question of how much immigration should be required, the question of who gets in and who does not should be dominated by questions of competing costs. It is evident that an immigration policy motivated by the

interests of disadvantaged outsiders could not, by definition, be biased in favour of those potential immigrants who are in the best off position, in the way Canada's immigration policies are biased today. Still, I do not attempt to present specific arguments for who does and does not get the opportunity to immigrate. In this chapter I simply ask for what reasons can a wealthy state legitimately limit immigration, and how much can a wealthy state legitimately limit immigration?

Given the circumstances that make the problem of immigration a worthwhile topic for political theorists, I have argued that one cannot, in general, legitimize or de-legitimize border controls. Extreme disparity in wealth, security, and opportunity is the justification for both closing and opening borders. We cannot disagree about whether a state does or does not have a right to control immigration. Instead, we must ask when it is legitimate or illegitimate to limit immigration. As a result, immigration controls are for some aims legitimate. This conclusion does not mean that immigration controls are ultimately just. Ideal circumstances would be those where immigration controls either became unnecessary or did not affect people's access to wealth, security, and opportunity. However, it is only when global disparity is not a significant political issue that we can make such arguments, while it is only within a context of disparity that immigration controls present us with difficult theoretical problems. I thus agree somewhat with Woodward's claim that the issue is largely one of conflicting obligations and moral claims. But I differ from Woodward when I argue that the debate is not best understood in terms of competing rights and duties. The rights that theorists like Carens and Woodward want to establish are often of the kind that exist

somewhat independent of circumstances. Carens wants to establish a right to free movement despite circumstances of limited resources. Woodward wants to establish a right to limit immigration despite circumstances of unfair disparity. Instead of this discourse on rights, it serves us better to describe the problem as one of conflicting costs.

Instead of trying to prove or disprove that a society has a general right to control immigration, we ought to establish what costs to a society's autonomy are required for the sake of outsiders' wellbeing, and what costs to outsiders' wellbeing are acceptable for the sake of insiders' autonomy. This will require a way to determine what are and are not legitimate costs to demand from a society, and what are and are not legitimate forms of societal priority. What are and are not worthwhile, valuable, and legitimate forms of societal priority are of course not self-evident. However, one can show that there are motivations for which a society is intuitively justified in limiting access to its borders, and motivations for which a society is intuitively not justified in limiting access. By showing both cases, I argue that both the autonomy of a society and the wellbeing of outsiders are morally significant enough to warrant inclusion into wealthy states' immigration policies. From this argument, I move forward in arguing why some but not all reasons for limiting immigration are justified, and thus why more open immigration policies are required of wealthy states.

Closing borders to protect publicly funded healthcare is motivated by a society's desire to redistribute resources to ensure access to health services for all people in the

country. Limiting access to healthcare by controlling immigration is an attempt to maintain the society's ability to use its resources for aims it has deemed to be worthwhile. Intuitively, the goal of providing equal access to healthcare in a society is an aim worth spending resources on, and an aim we can justify to those outside the society. Access to public healthcare is a value that seems in general to be worthwhile because it is reasonable to accept any individual's, family's or society's desire to guarantee their access to healthcare despite the high costs. It is difficult to see how outsiders could argue that our society has no right to spend on healthcare because of global disparity. Social activists both within and outside wealthy nations do not point to high levels of spending on social services as examples of illegitimate excess, even though social services such as healthcare account for the majority of many wealthy states' budgets. At the very least spending on healthcare is intuitively legitimate, and immigration controls to limit access to healthcare are also intuitively legitimate.

In response to Carens, who argues that borders are not morally significant enough to limit access to healthcare, I argue that the protection of healthcare does not look to the moral significance of borders themselves. Instead, the defense for limiting access to a state's public healthcare system looks directly at the moral significance of being allowed to protect the aim of public healthcare where immigration control is one element in achieving or maintaining this goal. Carens' argument is not convincing because he does not challenge the aim of protecting healthcare directly, but only the secondary issue of the moral significance of borders. In his essay "Legitimate Immigration Control," Rainer Bauböck argues that,

> individual political rights have to correspond to substantial collective rights of self-determination. There is not much point in political participation if the collective cannot even make a decision to redistribute private resources to some extent because this either collides directly with property rights or indirectly with a right of free movement.[1]

Similarly, it is difficult to imagine arguments that view spending on education as illegitimate. If spending on education is itself a legitimate and worthwhile aim of a society, then the only way we can argue that the environment necessary for pursuing this aim, controlled access to education, is illegitimate is by showing that the costs to outsiders associated with spending on education are too high. This will be a difficult task in a society where one can buy five dollar coffees, thousand dollar bottles of wine, and the 'high class' kind of toilet paper. We can incur costs elsewhere.

If we close borders to people with skin colours other than our own, closing borders does not seem legitimate. This type of policy aims at defending and promoting racist beliefs. Those with the wrong skin pigment who wish to immigrate could easily argue that such a spurious criterion does not justify the costs to them associated with closing borders. It is difficult to imagine an argument based on the promotion of a society's autonomy or wellbeing that could adequately defend an explicitly racist policy. Similarly, closing borders to poor people while opening them to rich people is intuitively illegitimate. Closing borders in this case is an attempt to deny poor outsiders access to the opportunities and wealth we enjoy for the sake of maintaining and perpetuating wide global disparity. It would be reasonable for a Haitian to argue that our standard of living, especially our level of consumption, is extravagant. Denying this Haitian access to Canadian society will have to be based on something

more than a desire to maintain our levels of consumption. An immigration policy of a rich nation today that is not willing to incur any costs for the sake of outsiders' wellbeing will be impossible to defend on moral grounds.

Given that there are intuitively compelling cases where immigration controls seem legitimate and illegitimate, I argue that control over immigration is only legitimate for the sake of some but not all aims of a society. Only some of a society's aims are legitimate in relation to concerns for outsiders' wellbeing. The difficult task of this work will be to show why it is morally required that wealthy states adopt more open immigration policies with the aim of addressing the interests of disadvantaged outsiders.

In both cases I posed and answered the question of what outsiders might see as reasonable in questions of access. Why would it be difficult to challenge a society's right to spend on healthcare, but easy to challenge a society's desire to keep the "wrong" coloured people out? If a state has a right to self-determination to pursue its own goals what is wrong with a racist immigration policy? A racist immigration policy certainly would be an expression of autonomy. However, a policy that is an expression of autonomy is not the same as a policy that aims at autonomy. The racist policy is not acceptable because it cannot be defended on the basis of its promotion of autonomy or wellbeing of either insiders or outsiders. The wellbeing and autonomy of outsiders clearly is not promoted by an outright limitation on their access to wealth, security, and opportunity. Nor is the wellbeing of this state's citizens promoted by

supporting and perpetuating a belief that is based on an arbitrary and morally insignificant factor such as pigment. The autonomy of insiders is not promoted either, as autonomy is only promoted when we move towards making informed choices. The racist policy is based on misinformation, and for this reason is an expression only of misguided autonomy.

Limiting immigration for the sake of protecting healthcare can be defended because it aims at protecting the wellbeing of the country's citizens. Adequate healthcare is a value that is fundamentally important to all people. A common way in which the lives of people in poor nations is contrasted and made vividly abhorrent to our sense of justice, is by describing their level of healthcare. Children die from a lack of basic vaccinations, a simple infection can be life threatening, and even seeing a doctor or getting medicine is often not an option. In order to view immigration issues as morally problematic one must also view the lack of wealth, opportunity, and security in many people's lives as unfair. Therefore, wealth, security, and opportunity cannot themselves be illegitimate. They are instead worthwhile goals. If Third World levels of healthcare are below the acceptable standard that is set by First World countries like Canada, we cannot be expected to have immigration policies that will destroy the healthcare standard. Protecting healthcare is defended by the view that the lack of wealth, security, and opportunity in many countries has moral significance.

If the defense of publicly funded healthcare is a legitimate reason for limiting immigration then there are a host of other societal aims that would also represent

legitimate reasons for limiting immigration. Examples would be a desire to protect the education system, the welfare system, wealth itself, a political system, valuable cultural traditions, language, etc. . . . I can imagine elements of all of the above that could be used adequately in defending limits on immigration. As a general principle it is worthwhile for wealthy states to protect the maintenance of a society that is defined by security, wealth, and opportunity. Why then won't a combination of worthwhile societal aims result in a society legitimately having a *de facto* right to control immigration as it sees fit? The most important reason is that we have shown that it is only some of society's aims that can be used to defend limiting immigration. This is only the case because the interests of disadvantaged outsides have been deemed to be morally significant in relation to advantaged peoples' interests. In circumstances of disparity societies do not have an inherent right to close borders, and legitimate immigration controls will have to make some room for interests of disadvantaged outsiders despite a wealth of good reasons for limiting immigration. A *de facto* right to close borders is not better at incorporating the interests of disadvantaged outsiders than an inherent right to close borders.

We cannot lay claim, in the absolute terms of a rights discourse, to the advantages of our society. If I am born into a wealthy society, I do not automatically owe it to outsiders to fix the negative effects associated with their birth. Those people in disadvantaged positions do not have a claim against me in justice that I give up my wealth to provide them with the benefits chance did not. But if I then prohibit these outsiders from gaining access to the societal advantages I enjoy, they can legitimately

ask on what basis I am laying claim to these advantages. Here the disadvantaged outsiders do have a claim in justice that we not exclude them, as we do not have an inherent right to arbitrarily realized advantages. There is a parallel between the notion that a society cannot limit immigration based on race, and the broader notion that a society cannot own a country in the way closed border theorists suppose.

The racist immigration policy is not legitimate because it aims at exclusion. Those born into wealth, security, and opportunity do not have an inherent right to these advantages to the exclusion of others. Exclusionary policies will have to be based on legitimate reasons. Racism is not a legitimate reason because there are no grounds on which one can argue that racism is a valuable societal aim. Racism might be an aim of some societies, but this aim is motivated only by a desire to exclude, not by values such as autonomy or wellbeing that can be used to defend limiting immigration. Correspondingly, immigration policies that result in outright exclusion cannot incorporate the interests of disadvantaged outsiders in any meaningful way. The interests of outsiders have significant moral weight when we judge our reactions to circumstances of disparity, and immigration policies must include these interests if they are to be considered legitimate. We cannot aim at or arrive at outright exclusion. As with other rights such as individual property rights, non-ideal circumstances prohibit states from having an absolute right to exclude outsiders as they see fit.

The limits we impose on property rights are similar to the limits I imagine on a society's ability to restrict immigration legitimately. In most societies, particularly

liberal democratic societies, property rights are fundamental to the functioning and desirability of the society. We tend to think of a society's control over its given territory as a kind of property right. The entire notion of property rights is a significant one for political theory, and many theorists debate whether we ought to have property rights or not. Two common views advanced in political theory are that a just society would be one where property rights are not necessary and eliminated, or one where property rights are not limited and they do not interfere with equality of opportunity. These ideal circumstances with regards to property right are similar to the ideal circumstances with regards to immigration. However, as the immigration debate is defined by non-ideal circumstances, I am most interested in the way all states, particularly liberal democratic states, limit individual authority over property because of non-ideal circumstances.

States take a portion of people's wealth through various forms of taxation and put those resources towards societal aims. Some of these aims are largely for economic structure or service oriented functions, such as most of the infrastructure spending. Others are redistributive such as welfare and social service spending, like healthcare and education. Given ideal circumstances we might not have to limit property rights for the sake of redistributive programs, or there might be no need for property rights. But, in a society where disparity is a structural reality we have to limit property rights. If someone is born into a poor family in a society were there are no redistributive programs to provide education, healthcare, affordable housing, and public transportation, that person would be faced with the consequences of acute disparity

despite the existence of enormous wealth within their country. The reason that redistributive policies are demanded is not because there is unequal opportunity in a society like the one described above, but because for those born into poverty there is no opportunity. The poor newborn's birthright would be to a life without education, healthcare, or a chance to experience any of the wealth that exists in her society. The idea that a baby can be born into a community of great wealth and, because of the lack of wealth passed on by the parents of one generation to the next, have no opportunity to enjoy the benefits of a wealthy society is not just. This is a feudal society. Absolute property rights cannot be justified, because such rights result in the absolute exclusion of those born into poverty from wealth, security, and opportunity. These circumstances of virtually no opportunity for poor individuals can only be accepted if we completely abandon a belief in equality of opportunity. In liberal democratic states abandoning the principle of equal opportunity to this degree will be in such contradiction to the concepts of democracy and liberalism that it would become pointless to talk about these states in a moral way. Modern liberal democracies have their foundation in a desire to abandon the feudal system, and it is the theoretical basis of what we call liberal democracies today that requires them to have redistributive property policies.

To attempt to weaken the inequitable effects of disparity we limit the choices people can make with regards to their own wealth. We have seen that in order to be concerned with the question of immigration, one must view much of the poverty in the world as below an acceptable level. We have established the need for more open immigration

policies as far as establishing that there are those who would benefit a great deal from access to the wealth, security, and opportunity that exists in countries like Canada. We have also established that origin of birth conceptualized at a global level results in an acutely inequitable distribution of opportunity. The underlying principle is that in making morally defendable decisions about immigration controls, wealthy states must allow some of their resources to be available in assisting those born into circumstances of poverty, similar to the way in which they do this within their own countries. There is a moral limit on a society's ability to exclude disadvantaged outsiders because we cannot lay claim to the advantages of our birth as an inherent right.

It is true that within a state redistributive programs do not solve the problem of disparity, and this will prove to be even more true of immigration policies and global disparity. However, opening borders to people born into poverty is one of the only means by which we can significantly improve the wealth, security, and opportunity they have access to within their lifetimes. Lant Pritchett in his article "Forget Convergence" examines the likelihood of change in the disparity between rich and poor nations. He notes that, ". . . the dispersion in incomes among countries . . . between 1960 and 1990 increased by 28 percent (from .86 to 1.1), and the ratio of the richest to the poorest countries rose by 45 percent just since 1960" (Pritchett p. 162). Pritchett, like others, does acknowledge that some nations are gaining ground on the wealthiest nations, but this observation cannot satisfy our concerns over poverty. Pritchett, in referring to countries that are mathematically converging with wealthy countries says,

> India, for example, registered an annual average growth rate of 3 percent between 1980-1993. If India could sustain this pace for another 100 years, its income would reach the level of high-income countries today. And, if India can sustain this growth differential for 377 years, my great-great-great-great-great-great-great-great-great-great-great grandchildren will be alive to see India's income level "converge.[2]

We certainly cannot solve the problem of disparity with open border policies, but we can do something to improve the lives of many by permitting more immigration. Peter and Renata Singer argue that the fact that we cannot solve the problem of poverty and disparity has little bearing on the question of how open our borders should be. Speaking to those who apply what they call "the all-or-nothing fallacy" the Singers say,

> What they forget is that, wonderful as it would be to save *all* the victims of famine, famine is not an all-or-nothing thing. The victims of famine are individual human beings, and it is better to help one than none, better to help 10,001 than 10,000, and 1,000,0001 than 1,000,000.[3]

Further, the Singers point out the basic moral problem with developed nations' approaches to immigration control. They say, "the immigration laws of developed countries effectively confer on their residents the benefits of membership in the better-off group, without giving the worst-off group any opportunity at all-never mind *equal* opportunity-to be among the better-off."[4] A commitment to equality of opportunity at even the most basic levels will require the limitation of both personal property rights and sovereignty over borders.

I have argued that we must abandon the commonly held idea that a state has an inherent right to limit immigration, and the critical philosophic argument that people have an inherent right to free movement. Instead, I argue that states must have

legitimate reasons for immigration controls. These reasons must arise from some valuable societal aim that can neither aim at exclusion for exclusion's sake, or result in a *de facto* exclusion of outsiders' interests. Legitimate immigration limits must be motivated by a desire to defend valuable societal aims while being open enough that the interests of disadvantaged outsiders are incorporated into the state's immigration policies. I have attempted to justify these arguments in two basic ways. The first is by arguing that immigration policies must incorporate the interests of both insiders and outsiders. In particular, legitimate immigration limits must be something that can be justified to disadvantaged outsiders. Thomas Scanlon in his book *What We Owe to Each Other* presents a contractualist analysis of what moral obligations we have to other human beings. His basic argument is that

> the subject matter of judgements of right and wrong. . . are judgements about what would be permitted by principles that could not reasonably be rejected, by people who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject.[5]

It is beyond the scope of this paper to examine Scanlon's general views, and I do not intend to present a strictly contractualist defense. Still, Scanlon does provide a useful examination of how we decide in circumstances of competing interests what is morally legitimate. The Singers argue that the interests of outsiders in the worst off positions are more morally significant than the interests of wealthy insiders. For this reason, the Singers argue that the interests of disadvantaged outsiders are always prior. Scanlon says,

> The idea that the complaints of the worse off have particular force has greater plausibility when we turn from principles whose aim is to create some specific form of protection or assurance to principles which tell us how we should distribute some transferable good, in cases in which the value of this good to potential beneficiaries is the dominant consideration.[6]

However, in speaking to the utilitarian view that the interests of the worst off will always have priority Scanlon says,

> From an agent's standpoint such principle would be intolerably intrusive. This illustrates the fact that in deciding whether a principle could reasonably be rejected we do not just compare costs, to individuals in various positions, of abiding by it, or not doing so, on a specific occasion. We have to consider also the general costs (and benefits) of its acceptance. In this case the general costs of acceptance are sufficient to support reasonable rejection. Rejecting a principle on this ground does not involve giving special weight to one's own interests. What is appealed to is not the weight of my interests or yours but rather the generic reasons that everyone in the position of the agent has for not wanting to be bound, in general, by such a strict requirement. Quite impartial reasoning about rejectability of principles leads to the conclusion that we are not required to be impartial in each actual decision we make.[7]

This argument describes why it is difficult for outsiders to be critical of spending on healthcare or education. Canada's spending on healthcare could certainly be used to benefit outsiders more than these resources are used to benefit ourselves. Canadians on average can afford to pay for private health coverage. However, a commitment to the priority of the worst off resulting in an inability to spend legitimately on healthcare is intolerably intrusive for any society. If we cannot legitimately spend on healthcare, what can we spend on? Correspondingly, more open immigration policies are justifiable to wealthy societies when the costs of these policies are not so intrusive that they eliminate the possibility of enjoying the benefits of political association. Stephen R. Perry in his essay "Immigration, justice, and culture" says, "any liberal, nonutilitarian theory of justice must acknowledge the value of autonomy by granting to individuals a certain measure of moral space in which to live their lives and pursue their own interests."[8] This principle holds true for societies as well. However, outright exclusion itself will never meet the test of justifiability to disadvantaged outsiders.

There is no basis on which a wealthy society can argue that an absolute right to exclude nonmembers from arbitrarily realized advantages is a principle that all people have good reasons to accept. For this reason, immigration policies that aim at opening borders to disadvantaged outsiders are morally required of wealthy states.

The second way in which I have addressed the issue of justifiability is by appealing to reasons entailed in the principles presented in this work. The argument that the immigration debate as it exists today cannot be properly addressed in a rights discourse has important implications for the issue of justifiability. Most importantly, my argument supports a view that outright exclusion is illegitimate. I have argued that there is no inherent right to the advantages people attain through the chance of birth, but that disparity itself does not automatically bring forth issues of justice with regards to the immigration debate. It is our reactions to circumstances of disparity that are significant in the immigration debate. Policies that aim at excluding poor outsiders from access to the wealth, security, and opportunity of wealthy states perpetuate disparity. When we abandon a rights discourse exclusion has to be based on some reason beyond the desire to exclude. In circumstances of disparity, aiming at perpetuating unfair circumstances is unjust. Therefore, disadvantaged outsiders' interests are morally significant in a way that requires wealthy states to incorporate these interests into their immigration policies.

At the same time, some level of exclusion is supported in a significant way by requiring immigration policies that incorporate the interest of disadvantaged outsiders.

It is only when we view the disparity between wealthy states and poor states to have moral significance that we can argue for more open immigration policies. When we view disparity as morally significant we have made a judgement that societies defined by wealth, security, and opportunity are worthwhile. If we did not think they were worthwhile and the kind of society all people should have the opportunity to live in, there would be little reason to be concerned about global disparity. Therefore, legitimate immigration controls do not require us to eliminate the possibility of maintaining many of the advantages associated with developed states.

I also appealed to principles entailed in liberal democracy itself in requiring more open immigration policies. Many argue that a right to limit immigration arises in wealthy liberal democratic states as a means to protect liberal institutions. However, the way we can act in protecting liberal democratic institution is limited by obligations that are actually entailed in liberal democracy. In countries like Canada or the United Kingdom, liberal democracy is a dominant feature of the society that provides strong reasons for recognizing the moral significance of outsiders interests. In liberal democratic states equality of opportunity, liberty, and individual rights are viewed as important political ideals that make the society valuable. For these societies there is a built-in sensitivity to the interests of anybody who suffers from a lack of wealth, security, and opportunity even when they are outside of the state. We do not think that Canadians should be treated as free and equal because they are Canadians. These principles ought to apply to individuals, not just to citizens of some but not all

countries. The desire to promote or defend liberal ideals is satisfied with immigration policies that reject equality of opportunity, liberty, and human rights on a global scale.

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[1] Bauböck, Rainer. "Legitimate Immigration Control" in *Legitimate and Illegitimate Discrimination: New Issues In Migration.* Howard Adelman (ed.) York Lane Press Inc.: North York ON, 1995. p, 19-20

[2] Pritchett, Lant. "Forget Convergence" in *Development and underdevelopment : the political economy of global inequality.* Mitchell A. Seligson, John T. Passé-Smith (eds.) Boulder, CO : Lynne Rienner Publishers, 1998. p. 163

[3] Peter and Renata Singer "The Ethics of Refugee Policy" in *Open Borders Closed Societies.* p. 120-121

[4] Singer, Peter & Renata. p. 117

[5] Scanlon, Thomas. *What we owe to each other.* Cambridge, Mass. : Belknap Press of Harvard University Press, 1998. p. 4

[6] Scanlon, p.224

[7] Scanlon, p.225

[8] Perry, Stephen R. "Immigration, justice, and culture" in *Justice in Immigration.* p. 105

Conclusion

The arguments presented in this thesis challenges rights based approaches to investigating the legitimacy of immigration controls. The country we are born into has a significant affect on the wealth, opportunity, and security we experience. As a result, political theorists engage in a debate on the moral legitimacy of our state system where citizenship, and thus access to the resources of any particular state, is a birthright. Most theoretical arguments on this topic suppose that societies either have a right or have no right to control immigration. Immigration controls are, they say, either just or unjust. The argument of this work is that the problem of immigration cannot be dealt with in this way. Immigration is not a problem of justice as it is normally understood. The theorists critiqued in this thesis attempt to try and solve the problem of immigration when they attempt to establish either the unconditional rights of a society to have autonomy over its borders, or the unconditional rights of potential immigrants to have access to other societies. These approaches do not address the tension between the interests of outsiders and insiders. Instead, they either suppose the elimination of global disparity, or argue that global disparity does not have any implications on the way a society can legitimately control immigration.

Ideal circumstances would be those where immigration controls either became unnecessary or did not affect people's access to wealth, security, and opportunity. However, it is only when global disparity is not significant that one can make such

arguments, while it is only within a context of disparity that immigration presents us with difficult theoretical problems. Extreme disparity in wealth, security, and opportunity is the justification for both closing and opening borders. As a result, we cannot disagree about whether a state has an inherent right to control immigration, but must ask when it is legitimate or illegitimate to limit immigration.

I have argued that disadvantaged outsiders do have claims in justice to immigrate to wealthy states. States do not have a general right to limit immigration, but must have legitimate reasons for immigration controls. Legitimate immigration limits must be motivated by a desire to defend valuable societal aims while being open enough that the interests of disadvantaged outsiders are incorporated into the state's immigration policies. Wealthy states do have moral obligations to admit disadvantaged outsiders, while all societies have legitimate reasons to limit immigration.

The argument of this thesis is broad, and I do not address how much more open wealthy states must be in developing legitimate immigration controls. Still, this work challenges the way wealthy states limit immigration today, and the common approaches political theorists use to address this topic.

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